



3 1761 11649768 6

RB19500



Library
of the
University of Toronto

HANDBOUND
AT THE



UNIVERSITY OF
TORONTO PRESS



Digitized by the Internet Archive
in 2023 with funding from
University of Toronto

2308

PROVINCE OF ONTARIO
ROYAL COMMISSION
ON
THE WORKMEN'S COMPENSATION ACT

HEARINGS HELD AT
TORONTO, ONTARIO

VOL. NO.
13

DATE
19 October 1966

Official Reporters

NETHERCUT & YOUNG LIMITED
48 York Street
TORONTO 1, ONTARIO
TELEPHONE 363-3111



Nethercut & Young
Toronto, Ontario

INDEX

Page No.

1	Ontario Mining Association	1792
2	Mr. Yourt (Rio Algom Mines)	1831
3	United Electrical Workers	1835
4	Dr. Powell (Turin Case)	1856
5	Workmen's Compensation Board	1864, 1915
6	Labourers' International Union of North America, Local 183	1879
7	Automotive Transport Association	1943
8	Motor Vehicle Manufacturers' Association	1944
9	Ontario Municipal Association	1945
10	The Retail Council of Canada	1957

EXHIBITS

11		
12		
13		
14	23 Extract from 34th Annual Report of Mines Accident Prevention Association of Ontario, May 1965	1793

15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		
26		
27		
28		
29		
30		



Nethercut & Young

Toronto, Ontario

IN THE MATTER OF The Public Inquiries
Act, R.S.O. 1960, Ch. 323

- and -

IN THE MATTER OF an Inquiry Into and
Report Upon The Workmen's Compensation
Act

BEFORE: The Honourable Mr. Justice G. A.
McGillivray, Commissioner, at
Room 200, 67 Richmond Street
West, Toronto, Ontario on Wednesday,
19th October, 1966.

APPEARANCES

W. Z. Estey, Q.C.)
and) Counsel to the Commission
H. D. Guthrie)

G. A. Johnston Secretary

ALSO PRESENT

E. A. Perry, S. W.)
McIntosh and G. N.) Ontario Mining Association
Yourt)

M. Broadfoot and) United Electrical, Radio and
M. R. Gulliford) Machine Workers of America

R. Koskie, M. J.) Labourers' International Union
Lynch, N. Pike and) of North America, Local 183
J. McShane)

Dr. A. B. Powell,)
Dr. L. Brennan and) Workmen's Compensation Board
Dr. T. Kavanaugh)

Nethercut & Young, Limited, Official Reporters, 48
York Street, Toronto, Ontario, per: F.J.N and R.L.L.



Oct.19/66
1/BL/SS

---On commencing at ten o'clock a.m.

MR. GUTHRIE: Mr. Commissioner, before we begin today's evidence I thought it might be as well to announce that the subject of Vocational Rehabilitation and Job Protection which is included in our original notice of topics was omitted from the notice for this week, and it will be the intention of the Commission to take up that subject when this section on medical matters is completed, probably commencing sometime Thursday.

Then to continue with medical matters, Mr. Commissioner, we have this morning Mr. Perry of the Ontario Mining Association, who is ready to submit his brief, which is a supplementary brief. It is before you.

THE COMMISSIONER: Yes, Mr. Perry.

MR. PERRY: Mr. Guthrie mentioned this is a supplementary brief to the one presented. I filed with you last week some background information on silicosis in Ontario, a survey that was made.

THE COMMISSIONER: I don't think I have seen that.

MR. GUTHRIE: Mr. Johnson is just getting it.

MR. PERRY: I don't propose to refer to it, but it is available. It is really just a historical background of what is going on. It was published a few years ago.

THE COMMISSIONER: That was a report by the Mines Accident Prevention Association.

MR. PERRY: Yes.



1 THE COMMISSIONER: It was produced by
2 your supervisor, or was it pursuant to a particular study?

3 MR. PERRY: It was a study that was
4 made by the Mines Accident Prevention Association.

5 THE COMMISSIONER: And the date of this
6 is May, 1965.

7 MR. PERRY: Yes.

8 MR. GUTHRIE: Perhaps that might be
9 marked as an exhibit.

10 THE COMMISSIONER: Yes. It will be
11 Exhibit 23.

12

13 EXHIBIT NO. 23: Extract from 34th Annual
14 Report of Mines Accident
15 Prevention Association of
16 Ontario, May, 1965.

17 MR. PERRY: If I may, I will read my
18 brief to you.

19 Silicosis in Ontario

20 For almost 40 years silicosis has been
21 a subject of major concern to the mining industry in
22 this Province. The Ontario Mining Association, the Mines
23 Accident Prevention Association, special committees
24 within these Associations, the McIntyre Research
25 Foundation, the Workmen's Compensation Board, the
26 Department of Health, and the Department of Mines have
27 worked individually and collectively to determine the
28 steps to be taken and the precautions to be observed for
29 the elimination and/or control of this occupational
30 disease.



1 A major objective of the industry is to
2 eliminate the causes of silicosis so that there will be
3 no occupational hazard even if the individual workman is
4 indifferent to those personal precautions which minimize
5 the effects of exposure.

6 Of the numerous techniques and practices
7 which have been developed for this purpose, the most
8 noteworthy are:

- 9 1. Initial radiological examination to
10 screen out physically susceptible
11 applicants.
- 12 2. Development of rock drills and machines
13 to minimize the creation of dust.
- 14 3. The ample use of water and water
15 sprays to suppress dust.
- 16 4. The provision of ample mechanical
17 means of ventilation for dust removal.
- 18 5. The use of aluminum prophylaxis.

19 It is a matter of interest that in this
20 Province there are, on the average, more than 4 tons of
21 fresh air used in mine ventilation for each ton of ore
22 mined from underground. This is equivalent to about
23 10,000 cubic feet of air for each cubic foot of ore
24 mined.

25 THE COMMISSIONER: This is an odd
26 statement. You may explain it. Is this air that is
27 pressured into the mine, air that is sent in, when you
28 talk about tons of air?

29 MR. PERRY: This is to ventilate the
30 mine.



1 THE COMMISSIONER: This is air that is
2 circulated through the mine in order to ventilate it?

3 MR. PERRY: That is right.

4 The attached Table 1 --- and I will
5 refer to it in detail in a minute --- shows the number
6 of silicosis cases recognized in Ontario between 1926
7 and 1965, with details as to (1) year of first exposure;
8 (2) average employment in dust exposure occupations; (3)
9 number of cases of silicosis; (4) cases per 1000 men
10 employed.

11 The abrupt change in the incidence of
12 silicosis starting with 1930 coincides with the
13 introduction of radiological examination of the chest.

14 It is pointed out that although some
15 new cases are being discovered each year in almost all
16 year groups, the majority of cases occur in those groups
17 whose initial exposure to dust pre-dates 1929, when
18 compulsory certification was instituted.

19 If I may, I will refer you to this
20 chart.

21 THE COMMISSIONER: You will probably
22 go on to deal with it, but how do you account for that?
23 Does it mean that people with some indication of
24 susceptibility to tuberculosis wouldn't be permitted
25 into the mine?

26 MR. PERRY: That is right. I am not a
27 doctor, but apparently from experience they can select
28 or pick out types that appear to be more susceptible
29 than others.

30 THE COMMISSIONER: I notice you emphasize



1 the change dates from the date when it started, but there
2 are all these other things as well.

3 MR. PERRY: Yes. I don't suggest it was
4 that single factor, but as a study of the causes of
5 silicosis has gone on, the study has been continued over
6 the years, all of these five particular items that I have
7 mentioned have come under scrutiny and they are all
8 recognized as contributing greatly to eliminating
9 silicosis and exposure to it.

10 Graph 1 shows the ages at death of
11 silicotic miners and of all Ontario males over 30 years
12 of age for the respective year groups, and indicates
13 that disability from silicosis is not shortening normal
14 life expectancy.

15 Recognition of the disease is difficult
16 for the following reasons:

- 17 1. The number of doctors who have had
18 sufficient experience to identify
19 the disease are few.

20 This was mentioned yesterday by Dr. Sutherland.

- 21 2. Some persons appear to be more
22 susceptible to exposure to dust
23 than others.

- 24 3. The length of time of exposure
25 appears to be increasing.

- 26 4. The disease appears to continue
27 to develop after removal from
28 conditions of exposure.

29 THE COMMISSIONER: When you say the
30 length of time of exposure appears to be increasing, you



1 mean the indications are you can be exposed for a longer
2 length of time without developing silicosis?

3 MR. PERRY: That is right.

4 Provisions in The Mining Act (Sec. 167),
5 The Workmen's Compensation Act (Sec. 116), and practices
6 of the Workmen's Compensation Board and of the Industry,
7 have been designed to protect the interests of the workman
8 in the light of these conditions. In summary these are:

- 9 1. In 1926 silicosis was recognized as
10 a compensable occupational disease.
- 11 2. Commencing January 1, 1929, The Mining
12 Act provided that an applicant for
13 work in a dust exposure occupation
14 was required to have a pre-employment
15 medical examination including chest
16 X ray.
17 It also provided that an applicant
18 be certified as free from disease of
19 the respiratory organs and that a
20 person employed in a dust exposure
21 occupation have an annual re-
22 examination.
- 23 3. Records of these examinations are
24 maintained by the Workmen's
25 Compensation Board.
- 26 4. In 1942 restrictions on the time limit
27 for filing of claims was removed and
28 in 1944 the minimum exposure period
29 was reduced to two years.
- 30 5. At the end of 1957 the the Minister



1 of Mines authorized a broad review
2 of silicosis in Ontario. This review
3 was conducted by Dr. John F. Paterson
4 and was published on June 1, 1959
5 as, Bulletin 158, Ontario Department
6 of Mines, "Silicosis in Hardrock
7 Miners in Ontario."
8 Of the recommendations made in this
9 report, many have been implemented
10 and the remainder have been the subjects
11 of study for adaption and application.

12 I am sorry that I am not able to file a copy of Dr.
13 Paterson's report. This is the only one I have, and I
14 think it is out of print now.

15 THE COMMISSIONER: Dr. Paterson himself
16 I believe will be a witness here.

17 MR. GUTHRIE: Tomorrow.

18 THE COMMISSIONER: Tomorrow, yes. Perhaps
19 he will be able to give us the gist of that report, and
20 if you have any questions at that time to help elucidate,
21 I will be glad to have them.

22 6. MR. PERRY: Dust exposure environment
23 of the operating mines is surveyed
24 semi-annually and summaries of the
25 results are reported to the Chief
26 Inspector of Mines for the Province.
27 It is noteworthy that Ontario is the
28 only known jurisdiction on this
29 continent where such surveys are
30 conducted on a routine basis.



1 The Industry is most conscious of its
2 responsibility to improve and control dust exposure
3 environments, and of its liability to employees for
4 disablement due to diseases resulting from dust exposure.

5 With respect to the control of dust
6 exposure environments, the progress made by the industry
7 is indicated by the trends shown in the attached chart
8 and graph.

9 With respect to liability to employees
10 for disablement, the industry contends that liability for
11 compensation should be established on the best medical
12 evidence available at any given time. In view of the
13 fact that compensation awards are paid for by the
14 industry the importance of medical evidence is particularly
15 significant in relating causes of death to compensable
16 disablement. In this connection the Ontario Mining
17 Association recommends:

- 18 1. That a person filing a claim be
19 required to show to the Workmen's
20 Compensation Board, that the basis
21 of the claim was due to dust
22 exposure in Ontario.

23 THE COMMISSIONER: Isn't that the case
24 now? You would have to do that now, wouldn't you?

25 MR. PERRY: That is the way it is now,
26 yes.

27 THE COMMISSIONER: It is a prerequisite,
28 surely.

29 MR. PERRY: Yes. I don't want it to be
30 changed.



1 2. That adjudication of a silicosis
2 claim be based on medical evidence.
3 3. That liability for a death claim
4 attributed to silicosis be deter-
5 mined pathologically by post-mortem
6 examination.

7 4. That the ultimate authority as to
8 medical opinion relating to silicosis
9 be vested in the Silicosis Referee
10 Board.

11 THE COMMISSIONER: That was the
12 recommendation of Dr.Sutherland yesterday, that there
13 should be no review of the Silicosis Referee Board's
14 decision. You agree with that?

15 MR. PERRY: Very much. And the reason
16 being that, as he said, there are very few people who
17 have had the experience and who are qualified to pass
18 this kind of a judgment. We feel that while there are
19 others beside the Silicosis Referee Board, they are not
20 too numerous, and the Silicosis Referee Board for
21 practical purposes is the most knowledgeable body on
22 this subject in a medical sense.

23 THE COMMISSIONER: No. 3 recommendation,
24 it is not customary to have post-mortem examinations?

25 MR. PERRY: No, it isn't.

26 THE COMMISSIONER: Because from what
27 Dr. Sutherland said, these bronchial conditions are very
28 hard to diagnose without a pathological report, whether
29 it is due to silicosis in many cases.

30 MR. PERRY: What we feel is that where a



1 claim is allowed after death of the person concerned, it
2 should be on the positive evidence of a pathological
3 examination.

4 THE COMMISSIONER: I suppose at the
5 moment the most the Board do would be under the control
6 of the relatives of the deceased, to get permission to
7 have a post-mortem.

8 MR. PERRY: I imagine that is the case.

9 THE COMMISSIONER: Is that all you have,
10 Mr. Perry?

11 MR. PERRY: I would like to refer you to
12 the table and the chart at the back. It is the table
13 before the chart; there is a table which precedes the
14 chart. In this table it shows the period of exposure
15 to dust taken in five-year periods; the average employment,
16 the number of persons employed in dust exposure
17 occupations; the number of cases of silicosis attributable
18 to those periods; and then the cases per 1,000 men
19 employed during the period. It is just dividing the
20 number of cases by the number of people employed in
21 these dust exposure occupations. You can see in this
22 just taking 1900 to 1904, that there were 1,900 people
23 employed in dust exposure occupations and 64 cases of
24 silicosis resulted from that, to give 33.68 cases per
25 1,000 employed. Without running through the figures,
26 the highest one is the 1920 to 1924, where there were
27 5,000 persons employed, and there were 315 cases, cases
28 per 1,000 being 63.00.

29 Now, there is a line drawn across there
30 between 1929 and 1930, which was when the radiological



Nethercut & Young

Toronto, Ontario

1802

1 examination was instituted, and you can see that the
2 number of persons employed in dust exposure occupations
3 has increased since that time and there has been quite a
4 marked decrease in the number of cases of silicosis,
5 particularly in the last years from 1940 on.

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

29

30



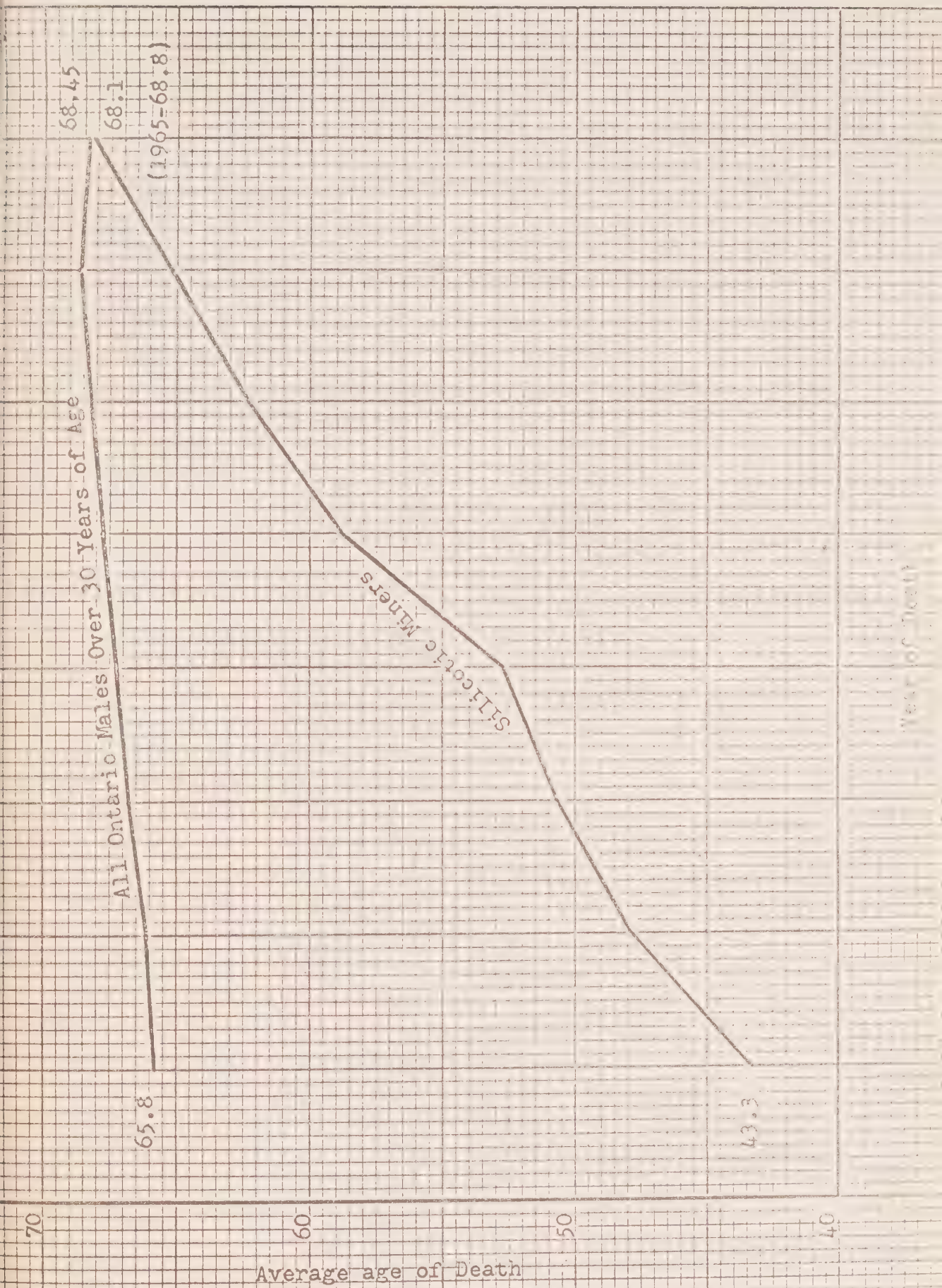
Nethercut & Young

1303

Toronto, Ontario

ONTARIO SILICOSIS CASES RECOGNIZED FROM 1926 to 1965

Period of first Exposure to dust	Average Employment in Dust Exposure Occupation	Number of Cases of Silicosis	Cases per 1000 men Employed during Period
Before 1900		57	
1900-1904	1,900	64	33.68
1905-1909	2,500	184	73.60
1910-1914	6,700	338	50.45
1915-1919	6,800	267	39.26
1920-1924	5,000	315	63.00
1925-1929	6,600	196	29.70
1930-1934	7,600	47	6.18
1935-1939	13,600	18	1.32
1940-1944	15,200	4	0.26
1945-1949	11,800	5	0.42
1950-1954	16,700	3	0.18
1955-1959	18,000	3	0.17
Total		1,501	





FJN/SS 1 So that in contrast to the very high 63 per 1,000 it is
2 now down to 0.18 per 1,000.

3 THE COMMISSIONER: A very remarkable
4 figure.

5 MR. PERRY: I am not suggesting that this
6 is all just due to the radiological examination; it is
7 when people became more conscious of the steps that could
8 be taken, first of all, to appreciate what silicosis was
9 and what they could do suppress or control it.

10 MR. GUTHRIE: Mr. Perry, are the figures
11 in the second column of new employment in each period?

12 MR. PERRY: No, this is just the number
13 of people employed in the industry.

14 THE COMMISSIONER: That is the total
15 number of hardrock miners?

16 MR. PERRY: Yes.

17 MR. GUTHRIE: So if you take the last
18 figure of 18,000 those men were not all first exposed to
19 dust from 1955 to 1959?

20 MR. PERRY: No.

21 MR. GUTHRIE: The two columns don't go
22 together in that way?

23 MR. PERRY: No. It is very difficult
24 to get statistical information on it, but this is just
25 to show --- what I wanted to show in this was the
26 decreasing number of cases of silicosis which is a
27 truthful enough statement, but it is whether it is one
28 in ten or one in 100 or one in 1,000 or one in 10,000 or
29 one in 100,000.

30 THE COMMISSIONER: Anyway, roughly this



1 situation has existed now since 1940. The incidence has
2 been very low ever since 1940 as compared with a high
3 incidence prior to that.

4 MR. PERRY: I don't want to leave the
5 impression that these figures are absolute. As I
6 mentioned in the brief, there are always more being added
7 to them, but the majority of them relate to those persons
8 who entered the industry prior to 1929. These numbers
9 will increase, I am sure, over the years, but not to the
10 same degree that the others have, and this is partly
11 because ---

12 THE COMMISSIONER: It looks as if since
13 1940 at least that you have hit a sort of table land
14 in there and it is running along about the same every
15 year. It has run long enough now that it is hardly
16 likely to increase.

17 MR. PERRY: The length of time exposure
18 is increasing so that --- I don't want to get in a
19 position where I say this is all that is going to occur
20 in these year groups, but I think it is going to be a
21 lot less than it was four years ago.

22 If I may refer to the graph at the back
23 this graph is a comparison of ages of death of
24 silicotic miners and of all Ontario males over 30 years
25 of age. I felt that this was a more realistic basis of
26 comparison and you can see starting in 1926 the average
27 of death of all Ontario males over 30 years of age was
28 65.8 and for silicotic miners it was 43.3. Over the
29 various year groups --- and I am taking them in five-year
30 groups to get a large enough number to make a better



1 comparison on this --- the age of death of the silicotic
2 miners has increased so that in the year group 1960 to
3 1964 the age of death of all Ontario males over 30 years
4 of age was 68.45 and the age at death of silicotic miners
5 was 68.1. In 1965, just separating a single year, the
6 age of death of silicotic miners was 68.8.

7 THE COMMISSIONER: You think your
8 accident prevention association has done a pretty good
9 job?

10 MR. PERRY: I feel that the situation
11 is that not only the accident prevention association but
12 the groups mentioned, the Ontario Mining Association, the
13 Mines Accident Prevention Association, the McIntyre
14 Research, the Workmen's Compensation Board, the
15 Department of Mines and the Department of Health, they
16 have all worked on it including the companies themselves.
17 The operating companies, it is what they have done that
18 has really brought it about, although it is with the
19 assistance and technical guidance and so on of these
20 groups that assisted them.

21 MR. GUTHRIE: Mr. Perry, at page 2 of
22 your brief could we look at that fresh air statistic
23 for just a moment?

24 MR. PERRY: Yes.

25 MR. GUTHRIE: It doesn't help me a great
26 deal without knowing how that would compare with some
27 other situations. Is that considered good, bad or
28 indifferent? Is there any regulation that governs it?

29 MR. PERRY: No, there is no regulation
30 that I know of other than that we have to have



1 ventilation. One of the --- in the Paterson report, and
2 I don't want to anticipate what he is going to say, but
3 one of the things that he strongly recommended was that
4 there be an ample supply of fresh air delivered for
5 ventilation purposes.

6 MR. GUTHRIE: Has anyone defined what
7 is "ample", let us put it that way?

8 MR. PERRY: Generally speaking, we go
9 by dust counts, for one thing. Admittedly, the closer
10 the fan is to the source the less dispersal there is
11 of the dust.

12 MR. GUTHRIE: This could vary in
13 individual mines.

14 MR. PERRY: Yes, it does vary. I think
15 that all our operating mines now, not under development,
16 but as soon as they get into production I don't know one
17 that has not got mechanical ventilation of the mine.

18 MR. GUTHRIE: You say that is not a
19 matter that is regulated by the Department of Mines as
20 to the quantity of air that is forced in?

21 MR. PERRY: No, there is no regulation.

22 THE COMMISSIONER: It is just a matter of
23 having your inspectors report and having the mine seek
24 to comply with what they think is adequate.

25 MR. PERRY: If the condition appears to
26 be not good we would certainly do something about it or
27 advise the mine to do something about it.

28 THE COMMISSIONER: Do you have inspectors?

29 MR. PERRY: Not as such. We travel all
30 the mines all the time ----



1 THE COMMISSIONER: You say "we travel".

2 MR. PERRY: This is the Mines Accident
3 Prevention Association.

4 THE COMMISSIONER: What do you have, a
5 general manager or somebody who does that?

6 MR. PERRY: Well, I happen to be
7 Executive Director of the Mines Accident Prevention
8 Association as well as the Executive Director for the
9 Ontario Mining Association.

10 THE COMMISSIONER: Do you do it
11 personally?

12 MR. PERRY: I don't do it personally, but
13 we have experts who do it.

14 THE COMMISSIONER: That is it, you will
15 have somebody who travels around to these various mines
16 for the Accident Prevention Association?

17 MR. PERRY: Yes.

18 THE COMMISSIONER: And he reports if
19 he thinks there should be some changes to improve matters.
20 He makes those reports?

21 MR. PERRY: Yes.

22 THE COMMISSIONER: There are no
23 inspectors appointed under The Mining Act?

24 MR. PERRY: There are inspectors under
25 The Mining Act and they also are there for the purpose
26 of inspecting the mines.

27 THE COMMISSIONER: What are they there
28 for?

29 MR. PERRY: Well, they are there to
30 enforce the Act.



1 THE COMMISSIONER: Does the Act make
2 certain specifications about stopes or safety conditions
3 or various things of that kind?

4 MR. PERRY: Not quite as specific as
5 that on the stopes, but they certainly do for safety
6 conditions generally, and it is left as broadly as that.

7 THE COMMISSIONER: Is that what the
8 inspector goes there for?

9 MR. PERRY: Yes.

10 MR. GUTHRIE: At the foot of your second
11 page, Mr. Perry, is there any suggestion intended there
12 that there is a difficulty in obtaining enough physicians
13 to man these chest X-ray stations or how are they manned
14 --- by radiologists? Who reads those?

15 MR. PERRY: They have doctors in charge
16 of taking the X-rays.

17 MR. GUTHRIE: A medical doctor is
18 present when the X-ray is taken?

19 MR. PERRY: Yes.

20 MR. GUTHRIE: Does he read the X-ray?

21 MR. PERRY: He reads the X-ray, yes.

22 MR. GUTHRIE: Is there any problem in
23 staffing those centres, any shortage?

24 MR. PERRY: That is left to the
25 Compensation Board.

26 MR. GUTHRIE: I was wondering if that
27 is what you were suggesting there.

28 MR. PERRY: No, the thing I was
29 suggesting here is that there are relatively few people
30 who have the experience necessary to make a proper



1 assessment of a condition.

2 MR. GUTHRIE: Could we look at Section 167
3 of The Mining Act for a moment, Mr. Perry? I just want
4 to be sure that I understand the way this examination
5 works. Section 167 (6) is the one that provides for the
6 pre-employment medical. If we have the same version.

7 MR. PERRY: Yes.

8 MR. GUTHRIE: And in that case the
9 medical officer must find that the applicant is free from
10 disease of the respiratory organs and otherwise fit for
11 employment in a dust exposure occupation and if he so
12 finds then under subsection (7) the applicant is granted
13 what I think is called an initial certificate, is that
14 right?

15 MR. PERRY: Yes

16 MR. GUTHRIE: And how long is that good,
17 that certificate --- a year is it before he must again
18 submit to an examination?

19 MR. PERRY: Well ---

20 MR. GUTHRIE: It looks to me under
21 subsection (8) he then is further examined at the end of
22 a year, and this was what interested me. In that
23 subsection it says:

24 "If the medical officer finds
25 upon examination at that time
26 that the holder is free from
27 tuberculosis he shall issue a
28 miner's certificate".

29 It no longer says "free from disease of the respiratory
30 organs". So what if he has developed a silicotic



1 condition at that point, is he still granted a miner's
2 licence?

3 MR. PERRY: Yes.

4 MR. GUTHRIE: So a silicotic is not
5 barred from employment in a dust exposure occupation.
6 His condition is recorded but he may still so mine, is
7 that so?

8 MR. McINTOSH: The limit for exposure
9 before silicosis is two years, so if he develops
10 silicosis before he gets his miner's certificate he would
11 not get his miner's certificate, but at the end of the
12 two years after examination if he is free of tuberculosis
13 then he gets his miner's certificate.

14 MR. GUTHRIE: Where does it say that, if
15 I may be obtuse about this?

16 MR. McINTOSH: That is at the end of the
17 second year, he gets his second examination.

18 "The holder of an endorsed
19 certificate since the endor=
20 sation of his initial has
21 completed eleven months or
22 more employment at the dust
23 exposure occupation."

24 So it is a year and eleven months he has his examination.
25 Then if he is free from tuberculosis he can get a miner's
26 certificate.

27 MR. GUTHRIE: I am still not with you.
28 I read that as eleven months and you say a year and
29 eleven months.

30 MR. McINTOSH: He gets his initial



1 certificate, he is examined and gets his initial
2 certificate.

3 MR. GUTHRIE: Under subsection (6):

4 MR. McINTOSH: That is right, and then in
5 another year he comes in for his endorsation.

6 MR. GUTHRIE: I see under (7) there is
7 another one and under (7) he still has to be free of
8 disease of the respiratory organs.

9 MR. McINTOSH: That is right.

10 MR. GUTHRIE: So that is the two years.
11 Then after the two years he need only be found free of
12 tuberculosis.

13 MR. PERRY: That is right.

14 MR. GUTHRIE: And then he may at his
15 option mine with a silicotic condition.

16 MR. McINTOSH: Definitely.

17 MR. GUTHRIE: But having once received
18 his miner's certificate how frequently then is ---- is it
19 every year after that he is re-examined

20 MR. PERRY: Yes, unless the Compensation
21 Board, Dr. Sutherland mentioned it in his comments
22 yesterday, that when they do develop or reach a certain
23 stage they keep a very close eye on them.

24 MR. McINTOSH: Section 9 provides for
25 the annual examination.

26 MR. GUTHRIE: On each of those later
27 occasions it is still only tuberculosis that could prevent
28 him being renewed, so to speak?

29 MR. PERRY: That is right.

30 MR. GUTHRIE: As a matter of practice it



1 silicosis is indicated what advice is given to the man?
2 Does it depend on his age?

3 MR. PERRY: This is regarded as
4 confidential information between the Compensation Board
5 and the man concerned.

6 MR. GUTHRIE: In an individual case, yes,
7 but I mean broadly. If he is a young man would he not be
8 encouraged to leave the industry?

9 MR. PERRY: No. The industry is not in
2-1 10 a position to encourage him to do that.

11 MR. GUTHRIE: So as far as you are
12 concerned no advice one way or the other is given.

13 MR. PERRY: The only time we find out is
14 when the Compensation Board tells us of the situation and
15 that is, I understand, with the approval of the miner
16 concerned; in other words, the detail as to his physical
17 condition regarding silicosis is not broadcast.

18 MR. GUTHRIE: As an employer your
19 company does not receive any copies of these reports

20 MR. PERRY: We do in some cases, but my
21 feeling is we do not receive in every case, but I do not
22 know.

23 MR. GUTHRIE: Your personnel record on
24 each employee does not include any reference to the
25 results of these annual examinations other than the fact
26 that his certificate was renewed or it was not?

27 MR. PERRY: Yes. Maybe what I can say
28 here is that some persons have silicosis but it is not
29 disabling and they continue to work.

30 MR. GUTHRIE: I suppose if it were



1 discovered in a man in his fifties or sixties it might
2 well be thought that he should just simply continue.

3 MR. PERRY: Yes.

4 MR. GUTHRIE: But I would have thought
5 perhaps if it developed at a young age this might be kind
6 of an important decision for the man to make and that he
7 ought to be guided by some medical advice, or would he
8 just seek it from his own private practitioner?

9 MR. PERRY: I am getting a little bit
10 over my depth here. We are on the administration of the
11 Compensation Board.

12 MR. GUTHRIE: Very well, we will ask
13 them. Item 6 at the foot of your third page speaks of
14 the semi-annual survey of dust exposure environment in
15 the operating mines, and I am thinking of that with
16 reference to the recommendations of the Silicosis
17 Committee that Mr. Kennedy told us about in his brief.
18 He cites recommendation No. 7 of that committee that
19 there should be periodic dust counts and adequate control
20 measures and I was a little uncertain of what that might
21 encompass. Do you feel that in Ontario the procedures
22 you refer to in your brief answer that recommendation?

23 MR. PERRY: I would feel that they do.
24 It was, I suppose, initiated or thought of before it was
25 accelerated by Dr. Paterson, and he may refer to this too,
26 but this is my feeling, that this is done as far as the
27 survey is concerned.

28 THE COMMISSIONER: You say that this is
29 the only province where it is done?

30 MR. PERRY: Yes, it is the only place on



1 this continent where it is done.

2 MR. GUTHRIE: Is a survey of dust
3 exposure environment the same thing as a dust count?

4 MR. PERRY: I suppose a dust count comes
5 out from it.

6 MR. GUTHRIE: And that inspection by the
7 Mines Department is a compulsory thing?

8 MR. PERRY: No, it isn't. In some cases
9 it is, but in some it is not.

10 MR. GUTHRIE: Do they count habitually, or
11 do they just count when they think it might be a good
12 time?

13 MR. PERRY: Oh, no, it is done every six
14 months.

15 MR. GUTHRIE: You can count on it every
16 six months?

17 MR. PERRY: Yes.

18 MR. GUTHRIE: And if they find conditions
19 not to their liking, what is done?

20 MR. PERRY: When you say "not to their
21 liking", who is "they"?

22 MR. GUTHRIE: The Mines Department.

23 MR. PERRY: Actually I have never been in
24 a position, I don't think, where they have ever had to
25 make any comment on it. There is usually some explanation
26 by the company as to what has been done in the light of
27 this situation.

28 MR. GUTHRIE: I was just wondering: Your
29 point speaks of surveys and summaries and reports, but
30 what is the enforcement followup, if any, if the report



1 indicates that controls are inadequate? Is there some
2 truth in that, or is it just a matter that the Mines
3 Department tries to persuade the employer to work out?

4 MR. PERRY: We have not reached the
5 stage yet ~~first of all~~ first of all, it breaks into two groups.
6 One is a compulsory one, one is a voluntary one. The
7 compulsory is in connection with ventilation in uranium
8 mines which is required. Where there is not uranium it
9 is not required, but nevertheless it is done.

10 MR. GUTHRIE: Is there some reference you
11 have there?

12 MR. PERRY: Yes, my attention has been
13 drawn to Section 203 of the Mining Act which is at page
14 50. Shall I read this?

15 MR. GUTHRIE: Yes.

16 MR. PERRY: Section 203 of the Mining
17 Act:

18 "The ventilation of every mine
19 shall be such that the air in all of
20 its workings which are in use and
21 are to be used by workmen or others
22 shall be free from dangerous amounts
23 of noxious impurities and shall
24 contain sufficient oxygen to obviate
25 danger to the health of any one
26 employed in the mine."

27 MR. GUTHRIE: That is a matter that
28 would be subject to the inspection of the mine inspector
29 when he makes his general survey of the mine.

30 MR. PERRY: That is right.



1 MR. GUTHRIE: And in addition to that
2 you have on a voluntary basis your own inspectors from
3 the Accident Prevention Association, is that the way it
4 works?

5 MR. PERRY: Yes. They are not inspectors
6 for the purpose of enforcement.

7 MR. GUTHRIE: I understand it now, yes.
8 Then, just to conclude with the recommendations you make
9 on page 4, Mr. Perry, I think we found that items 1 and
10 2 represent the present state of affairs.

11 MR. PERRY: Yes.

12 MR. GUTHRIE: And you don't want to see a
13 change in those?

14 MR. PERRY: No.

15 MR. GUTHRIE: And in item 3 would you
16 want a post-mortem examination in every case of a
17 silicotic death claim, or would it only be where some
18 other organs were perhaps involved which was the cause of
19 death, one of these unforeseen conditions such as liver,
20 kidney, heart or something of that sort?

21 MR. PERRY: Wherever there is continuing
22 liability for payment I think what we want is a post-
23 mortem.

24 MR. GUTHRIE: You are saying in every
25 case?

26 MR. PERRY: Right.

27 MR. GUTHRIE: On this question of the
28 ultimate authority in the referee board, you do say as to
29 medical opinion) do you mean there might be an appeal on
30 non-medical matters?



1 MR. PERRY: I am just going by --- I can
2 quote it word for word, but the thought is that ----

3 THE COMMISSIONER: That was what Dr.
4 Sutherland was referring to too. He was saying that was
5 all they would deal with, would be with the medical
6 aspects of the case.

7 MR. PERRY: That is right. The other
8 justice in the case, as they say in the ~~compensation~~ ---

9 MR. GUTHRIE: Why should it be any
10 different in the case of silicosis than, say, some
11 complicated brain damage or neurological case? There
12 certainly many, many areas of the body I am sure where
13 there are few specialists and yet the appeal system
14 applies and there is a medical member at the vario
15 levels or advisor. Why is silicosis that much different

16 MR. PERRY: Well, I think Dr. Sutherla
17 said it very well yesterday in that it is a little
18 different and the most expert people on this are the ones
19 who get first contact, not necessarily in the other cases
20 where there are usually other experts who can be referred
21 to as to whatever the problem is-- in things that don't
22 relate to silicosis.

23 MR. GUTHRIE: You feel that the pres
24 of a competent medical advisor at the ordinary appeal
25 levels is not sufficient?

26 MR. PERRY: With all respect to him I
27 don't think he has had the experience with silicosis.

28 MR. GUTHRIE: That may be true, he may
29 not have had experience, but a broken right toe or
30 something, I don't know what, he is there covering a



1 very broad range and yet you just isolate this one thing
2 that has got to be outside your system.

3 MR. PERRY: The reason is that --- and
4 you almost said it yourself --- is that he covers a broad
5 range and this is a very special item.

6 MR. GUTHRIE: It seems to me that there
7 are so many specialties you could say that of many other
8 diseases.

9 MR. PERRY: Oh, that is true. Some of the
10 others that you mentioned as far as liability for
11 compensation is concerned it doesn't affect us.

12 MR. GUTHRIE: Then could you just tell us
13 the sources of your information in these tables and
14 graphs?

15 MR. PERRY: This is statistical information
16 that we accumulated ourselves on it. Mr. McIntosh has
17 done the statistical work on this.

18 MR. GUTHRIE: These are records kept by
19 the Mining Association or the Mines Accident Prevention
20 Association?

21 MR. PERRY: Well, between the two of them.

22 MR. GUTHRIE: I am still confused about
23 the heading of the first column on Table 1. Does that
24 need to say any more than "Period"?

25 MR. PERRY: Well, we broke it down into
26 five-year periods.

27 MR. GUTHRIE: I know, but again taking
28 the 18,000 men employed in the period 1955 to 1959, they
29 were not first exposed to dust in that period. If you
30 look at your heading that is confusing. Some of them



1 were exposed to dust in the 1920's and the 1930's and
2 the 1940's.

3 MR. PERRY: That is right.

4 MR. GUTHRIE: I am puzzled by that heading.
5 Could it not just say "Period"?

6 MR. PERRY: I don't know. What we tried
7 to do was to show what the situation in the industry was
8 as far as the total number of people employed in it was
9 concerned.

10 MR. GUTHRIE: That is all it is intending
11 to indicate?

12 MR. PERRY: That is all it is intended
13 to indicate.

14 MR. GUTHRIE: Thank you, Mr. Perry.

15 MR. PERRY: I would like to make a comment
16 on one of the points raised the other day which was on
17 the merit of reciprocal agreements between provinces
18 for consideration of silicosis cases.

19 I would think as an opinion that in
20 order to consider this in a practical sense the Acts
21 would have to be similar and the administration of the
22 Acts would have to be similar and the most confusing
23 aspect of all is how would you pro rate the responsi-
24 or liability between the provinces as to paying for these
25 claims, whatever the award was that was made on it? It
26 is not simply dividing the years of exposure in one place
27 and in another because it appears that the effect of
28 concentrations of dust and so on must have some ---

29 THE COMMISSIONER: It is obviously a
30 desirable reform in whatever shape it comes because miners



1 do move around a lot, particularly in the filling, for
2 instance, do they not?

3 MR. PERRY: Yes, they do, but there
4 miners moving from place to place, there is no question
5 about that. Whether they are in large number relatively
6 is another matter. I am not quite sure about that.

7 I would like to also table with you an
8 analysis of the causes of death over the various year
9 groups.

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

29

30



/BL/SS

1 Dr. Sutherland was mentioning the effect
2 of TB and other diseases, those related to silicosis and
3 those not related to silicosis, in his comments yesterday.
4 This is a graphical presentation of the facts.

5 THE COMMISSIONER: Once again, where do these
6 figures come from?

7 MR. PERRY: These are the causes of
8 death of silicotic miners as reported.

9 THE COMMISSIONER: You are saying causes
10 of death of silicosis cases. These are known silicosis
11 cases?

12 MR. PERRY: These are known silicotics.

13 THE COMMISSIONER: 1926 to 1929, almost
14 80 percent TB.

15 MR. PERRY: Yes.

16 THE COMMISSIONER: Some right heart and
17 some pneumonia, and there was about 12 percent other.
18 1930 to 1934, about the same for TB and pneumonia, and
19 in there there is an extra one. Up to the year 1955
20 there are no other reasons given for death. Then in 1954
21 TB is right down to about 35 percent, other causes have
22 increased; and in 1955 to 1959 you have coronary --- is
23 that haemorrhages?

24 MR. PERRY: Cerebral haemorrhage.

25 THE COMMISSIONER: Your TB rate keeps
26 going down. The TB rate in 1960-64 is down to about 8
27 percent. Pneumonia, right heart, other heart, cancer and
28 cerebral haemorrhage, and it is still about 8 percent for
29 other types of death.

30 MR. PERRY: Yes.



1 THE COMMISSIONER: What do you gather
2 from this? Is there anything particularly you want to
3 emphasize?

4 MR. PERRY: Other than TB, which was the
5 most lethal, if that is the right word. It shows how
6 well it has been controlled and that the effect has been
7 reduced to close to zero.

8 MR. GUTHRIE: It is the right heart and
9 pneumonia that have taken the jump latterly.

10 MR. PERRY: Yes.

11 THE COMMISSIONER: What is the jagged
12 line there?

13 MR. PERRY: That is the line which
14 divides where a silicosis claim was allowed, where the
15 death was attributed to silicosis.

16 THE COMMISSIONER: The ones below?

17 MR. PERRY: Yes.

18 THE COMMISSIONER: And the ones above
19 were not?

20 MR. PERRY: Yes. This just illustrated
21 Dr. Sutherland's comments as to things other than
22 silicosis.

23 THE COMMISSIONER: I suppose also a
24 comment on that chart is the fact that, according to
25 other graph that you filed, miners are living longer,
26 the ones with silicosis, and their average age comes up
27 to 68, and then you get the normal fatalities coming in
28 that always go with old age.

29 MR. PERRY: It is up to 87.

30 MR. GUTHRIE: Mr. Commissioner, Mr.



1 Thibault of the Mine, Mill Union has asked if he may be
2 permitted to put one or two questions to Mr. Perry on the
3 dust situation.

4 THE COMMISSIONER: I am sure Mr. Perry
5 would be glad to answer any questions.

6 MR. THIBAUT: As I was following your
7 remarks this morning, Mr. Perry, the question arose in
8 my mind whether or not there is a standardized time
9 schedule, so to speak, in each mine regulating the taking
10 of dust counts?

11 THE COMMISSIONER: I am sorry, I didn't
12 get the import of that.

13 MR. THIBAUT: I am assuming from the
14 outset, Mr. Commissioner, that the Mines Association,
15 generally speaking, is generally responsible for the
16 conduct of the individual mine forming part of the
17 Association or belonging to the Association, and therefore
18 I raise the question in conjunction with Mr. Perry's
19 remarks of this morning as to whether or not there may
20 be a standardized time schedule procedure in which each
21 of the mines conduct a dust count. For example, is it
22 standardized practice that the dust count in the mines
23 is taken each day, oftener or less oftener?

24 MR. PERRY: It is standardized to the
25 point where we conduct a summer and winter survey because
26 of the effect of the climate on ability to ventilate.
27 When you are handling hot air, it might average 70 to 75
28 in the summer.

29 THE COMMISSIONER: Are these spot checks
30 one in the summer and one in the winter?



1 MR. PERRY: It is a series of checks
2 taken in the mine at the work places, and it depends on
3 the size of the mine. Some larger mines have to have
4 several people doing it all the time; they don't stop in
5 between, there is no on and off business.

6 THE COMMISSIONER: You don't lay down
7 any specific regulations as to when checks shall be
8 carried out?

9 MR. PERRY: No. But we do as to work
10 places and operations, whether it is in stopes, drilling
11 and timbering and raising, drifting, and so on.

12 THE COMMISSIONER: You mean you do make
13 regulations as to how often checks should be made in those
14 operations?

15 MR. PERRY: Well, we want all these
16 operations covered, we want a number of samples taken,
17 but in a small operation it might be a number of samples
18 taken at the same place or repeated oftener. In a large
19 operation it might be only a series taken in different
20 places.

21 MR. THIBAUT: Are we confusing the
22 checks for carbon monoxide?

23 MR. PERRY: Well, can I take it from your
24 question that you are asking do they take a sample on the
25 hour, every hour and at every work place? They don't.

26 MR. THIBAUT: Is the daily routine less
27 often or more often?

28 MR. PERRY: In the larger mines it is a
29 daily routine because it is a full-time job for the
30 people working on dust control.



1 MR. THIBAUT: At each work place in the
2 mine?

3 MR. PERRY: They don't go to every work
4 place every shift.

5 MR. THIBAUT: Well, dust permeates the
6 entire operation underground. Of course, when we talk of
7 dust counts we talk of a total dust count.

8 MR. PERRY: To carry it out that way you
9 would have to have the mine having dust counts all the
10 time at every place.

11 MR. THIBAUT: You certainly would. I am
12 just asking if you have a standardized practice.

13 MR. PERRY: It is if they get enough
14 samples in various work places.

15 MR. THIBAUT: If I am suggesting any-
16 thing, I am simply suggesting it is imperative that it
17 must be a very sufficient and adequate dust count in the
18 working areas in relation to dust presence and tolerability.
19 That is what I am suggesting.

20 I would go on to another question.

21 THE COMMISSIONER: As I understand you,
22 Mr. Perry, in the bigger mines you will take a dust count
23 here today and there tomorrow; he does daily work on it
24 in one spot or another.

25 MR. PERRY: Yes.

26 THE COMMISSIONER: And in the smaller
27 mines it is not done daily, it is done from time to time.

28 MR. PERRY: Yes. A man may do a number
29 of smaller mines.

30 MR. THIBAUT: In your experience in the



1 Mines Association, has it been your experience that the
2 presence of dust and the degree may vary quite appreciably
3 within any given working area of the mine or the entire
4 mine atmosphere itself in an eight-hour work shift or
5 even within a 24-hour day work period?

6 MR. PERRY: This would be true, yes.

7 MR. THIBAUT: For example, in today's
8 practice they use, in fact, tons of explosive in one
9 blast in the long-hole drilling which can create a
10 tremendous upheaval of dust in the entire operation.

11 MR. PERRY: That is true.

12 MR. THIBAUT: This is accepted as a
13 problem in dust control?

14 MR. PERRY: Yes. I can't say for all
15 mines, but I know it is the practice in a great many of
16 them that when they do create a condition like that the
17 people are removed from the mine and it is at the end of
18 a shift or something of that nature, so they can
19 establish the dust that is created.

20 MR. THIBAUT: Of course, I used an
21 overall example, but in the work shift the men are not
22 removed.

23 MR. PERRY: Yes. But if there is a
24 shock loading, such as you have mentioned, when it is
25 scheduled they do it so that they can handle the dust
26 that is created.

27 MR. THIBAUT: Now, the final question.
28 This is kind of difficult to put. Let me put it this
29 way. By whom and by what means is the tolerable dust
30 level, that is the amount of dust safely allowable in the



1 atmosphere, in the working place, decided within the
2 activity of the Association, of course?

3 THE COMMISSIONER: Do you have a tolerable
4 dust level or do you just try to keep it as low as you
5 can?

6 MR. PERRY: What we are shooting at is
7 around 300 parts.

8 THE COMMISSIONER: You shoot at what you
9 consider a desirable tolerability?

10 MR. PERRY: Yes. A few years ago it was
11 500.

12 MR. GUTHRIE: 500 what, Mr. Perry?

13 MR. PERRY: Parts per c.c. --- particles
14 per c.c., pardon me. Now, the knowledge on it is not
15 absolute yet. It has been studied continuously to try to
16 make some assessment.

17 THE COMMISSIONER: I suppose, without
18 considering what a tolerable dust level is, you just seek
19 to get it down to the minimum dust level, but I suppose in
20 in the mine you found it was running over 500, consistent
21 with today's practice, you could get it down quite a lot.

22 MR. PERRY: Every effort is made to do
23 that. When you talk about 500 parts or 300 parts, the
24 number of parts in the atmosphere is relatively high, too.

25 MR. THIBAUT: Unless I am in error,
26 do believe the Department of Health establishes a
27 tolerable radiation level in the uranium mines, and I
28 was trying to determine particularly who establishes the
29 tolerable level at this point. I know it is the
30 Department of Health in instances of radiation. Now, in



1 instances of dust does that responsibility rest anywhere
2 with the Mines Association rather than with the Department
3 of Health? They are two similar problems in my estimation.

4 MR. PERRY: I think that ultimately it
5 would rest with the Department of Health.

6 MR. THIBAUT: To your knowledge, does
7 it?

8 MR. PERRY: I think that the Department of
9 Health's view on the subject is changing all the time.

10 MR. THIBAUT: Thank you.

11 THE COMMISSIONER: In other words,
12 they don't notify you of what they call a tolerable level.
13 Is that correct?

14 MR. PERRY: That is correct. That is more
15 or less understood. We have never had anything --- if it
16 got out, fine.

17 I would like to ask, Mr. Commissioner,
18 Mr. Yourt from Rio Algom Mines, who is in the audience
19 and who has had a lot of experience in this particular
20 area, if he would care to comment on this.

21 THE COMMISSIONER: We would be glad to
22 hear from Mr. Yourt if he can help us on the matter we
23 are considering at the moment.

24 MR. PERRY: Is there anything you would
25 like to add? Could you comment in some detail?

26 MR. YOURT: Mr. Commissioner, without
27 belabouring the subject, I might add a few comments
28 regarding this tolerance level which you speak of. This
29 might be better called guides or objectives. I might say
30 that there are objectives set out in print in the United



States, which are established on a different principle of sampling. In the United States they use an instrument called an impinger and a microscope to count it, and we can't relate it directly to ours because in our method of counting we see more particles than the impinger does. We used that as a guide. It is a tougher guide to satisfy our instruments. So when we reach that level we are better off than their tolerance would indicate. For example, in South Africa they have established these counts, 300, and they keep them below that. There are a number of factors enter in here. If you have a high percentage of quartz in the mineral being mined, then we set lower objectives in those areas. So there isn't one figure which is a general guide.

THE COMMISSIONER: You say you lower the objectives?

MR. YOURT: We had for lower objectives, we strive for a lower level.

COMMISSIONER: You mean 300 as compared to 500?

MR. YOURT: Yes.

THE COMMISSIONER: Because quartz is an element in this?

MR. YOURT: Yes, it is the element. It is impossible to establish one figure, and that is why it isn't in print. It would take a great deal of experience, and in view of the lag, the time it takes to be a silicotic, that level should be met.

THE COMMISSIONER: Have they got radiation established yet?



1 MR. YOURT: Well, that is a good point.

2 MR. GUTHRIE: In these larger mines Mr.
3 Perry mentioned where there is perhaps a daily check, is
4 that made by a mine officer or inspector of the Mines
5 Accident Prevention Association?

6 MR. YOURT: Each mine, the average size
7 mine --- for example, our mine is a uranium mine, and we
8 have two men who are steadily taking these samples. It
9 is a continuous operation.

10 MR. GUTHRIE: They are employees of your
11 company?

12 MR. YOURT: Yes, they are technicians.

13 MR. GUTHRIE: Does their report, as well
14 as going into your own files, go to Toronto, to the
15 Accident Prevention Association?

16 MR. YOURT: In actual practice the
17 reports from these technicians are filled in on forms and
18 they are then transmitted to the Association where they
19 are summarized, and that is the formal part of it. This
20 is done so that the Association and the Department of
21 Mines can get an overall picture, see where the problem
22 areas are. But in actual practice the mines inspector
23 in each district, the district engineer of mines visits
24 the mine and examines the detailed surveys, and he can put
25 his finger on a problem area and he can go to the manager
26 and see what can be done about this and have it corrected.
27 This is what goes on in practice.

28 MR. GUTHRIE: Are there cases where the
29 mine inspector might be satisfied but the Association
30 might not and they would endeavour to do something



1 further?

2 MR. YOURT: We set ourselves probably a
3 stricter objective than is set out in the regulations. We
4 try to get our managers and our staff to go beyond what is
5 required in law, and that has been the practice generally.

6 MR. GUTHRIE: But those are efforts by
7 persuasion. There is no penalty for not complying.

8 MR. YOURT: No. But the mine engineer
9 can, from the regulations, not only the one read previously
10 but if he sees an area he has broad powers to enforce
11 and he does so in instances.

12
13 he be here next week on the matter of accident prevention

14 MR. YOURT: Yes. We have some thoughts
15 on the comments made yesterday.

16 THE COMMISSIONER: Your association here
17 appears to have achieved very substantial results, but
18 won't get off on it if you will be here next week.

19 MR. YOURT: Yes, sir.

20 THE COMMISSIONER: Thank you, Mr. Perry.

21 MR. GUTHRIE: Mr. Commissioner, the
22 United Electrical, Radio and Machine Workers of America
23 have agreed to appear on this subject

24 THE COMMISSIONER:
25 convenient to break now for five minutes and then we can
26 start on it.

27
28 ---Short recess.

29

30



1/PJN/SS 1 --On resuming.

2

3

MR. BROADFOOT: Mr. Commissioner, we are presenting our part of the brief this morning at page 14.

5

6

... is the United States ...

7

8

MR. BROADFOOT: ... is.

9

MR. GUTHRIE: Mr. Broadfoot, I wonder if you would like to start a little earlier and deal with the comments on pre-existing conditions. I see you have something on that at page 8 of your brief, and it comes under this heading.

10

11

12

13

14

MR. BROADFOOT: Yes.

15

MR. GUTHRIE: It is on page 8 of your brief.

16

MR. BROADFOOT: We will do it. Page 8. This is in the first paragraph relating to pre-existing conditions.

18

19

Another area of difficulty is that involving injuries or physical conditions where it is alleged that there is a pre-existing injury and/or congenital condition, and the Board rejects outright a claim for compensation or limits the ability to that portion of the disablement which, in some cases, is attributable to the employment. This problem is often encountered in claims having to do with strains and sprains, industrial-type diseases, hernia, back injuries, etc.

20

21

22

23

24

25

26

27

28

As an example, we quote below correspondence relating to a claim involving a knee injury, and

29

30



Nethercut & Young

Toronto, Ontario

1836

1 where medical examination apparently disclosed some
2 disability to the knee which pre-dated the injury for
3 which the claim was made. A letter from the Board to the
4 claimant, dated February 3, 1964, contained the following:

5 "The Chairman of the Board...has
6 reviewed your claim file with me
7 and a Senior Medical Consultant,
8 and has instructed me to acknowledge
9 your telephone call of January 23,
10 1964.

11 "First of all, I must point out
12 that you were advised on September
13 3, 1963 that your claim was allowed
14 on an aggravation basis only. Our
15 letter of that date states:

16 "Your claim has been allowed
17 on the basis of aggravation
18 as recent reports show a
19 condition in your right knee
20 was present before your July
21 16, 1963 accident.

22 "This is brought to your
23 attention as it may possibly
24 affect the extent of your
25 entitlement under the Work-
26 men's Compensation Act."

27 "When you were in our Hospital
28 and Rehabilitation Center for treat-
29 ment, it was apparent that you had
30 an exostosis on your right leg which



1 was present prior to your accident
2 of July, 1963 and, therefore, was
3 non-compensable. Our records
4 indicate that Dr. _____ commented
5 to you that you might have to have
6 treatment to this area at some
7 future date, and if he gave you the
8 impression that this was considered
9 as further entitlement under the
10 Act, then this is unfortunate because
11 your entitlement under the Act does
12 not include treatment for this
13 condition as it is not the result
14 of your accident nor is it a dis-
15 ability resulting from your employment...

16 In connection with this particular claim it is to be
17 noted that the personal doctor of the claimant has
18 expressed an important opinion. His doctor wrote the
19 Workmen's Compensation Board on February _____
20 follows:

21 "The above named patient has asked
22 me to write to you further on the
23 subject of his disabled right knee.

24 "You will recall that this man has
25 complained of an unstable and pain-
26 ful knee since shortly after his
27 operation by Dr. _____ on
28 August 12, 1963.

29 "In a review of the correspondence
30 to date it would appear that the



1 Board felt that his complaints were
2 due to the presence of a rather large
3 exostosis in the region of the right
4 adductor tubercle. Accordingly this
5 tubercle was removed by Dr. _____
6 and myself on March 2nd, 1965.
7 "Unfortunately this man still
8 complains of the original symptoms
9 which were present after his operation
10 in 1963.

11 "This would seem to indicate that
12 the exostosis had very little to do
13 with this man's problem, although it
14 is quite possible that it was the
15 result of a traumatic injury to the
16 knee.

17 "It would seem logical in my opinion
18 that by exclusion of other possible
19 causes of this man's condition we
20 are left with a painful disabled knee
21 following surgery in a compensable
22 injury. If this indeed is the case,
23 then the Board has indeed some
24 responsibility for this patient's
25 condition...."

26 The question that occurs in connection
27 with such a claim as the above, and claims which involve
28 the existence of some congenital condition coupled with
29 compensable injury, is the effect of the employment on
30 such conditions. Would the worker have had any serious



1 problem with the pre-existing condition under other
2 circumstances?

3 In our view there should be no loss of
4 entitlement because of a pre-existing problem, where it is
5 established that the disablement is in any way caused or
6 aggravated by an accident, or work conditions, at the
7 place of employment.

8 We recognize that the employers will
9 argue very forcefully against having to accept, through
10 compensation assessment, responsibility for conditions
11 which do not, in total, arise out of the employment. The
12 same protest would undoubtedly be made with respect to
13 certain other recommendations which we make in this
14 submission, if enacted into law.

15 However, as stated before, we do not
16 believe that the cost impact should in any way determine
17 the application of a just and equitable measure of
18 compensation to injured workmen. If, in the considered
19 opinion of the government and the legislature, some changes
20 in the Act which would require additional financing
21 should not be assessed directly to the employers, then
22 necessary funds should be made available for this purpose
23 from the general revenue of the province.

24 We do not advocate that this be done.
25 We believe that comprehensive protection should be
26 assured workmen under the Workmen's Compensation Act, and
27 that the costs of same are a proper levy against the
28 employers of labour. The suggestion that the financing
29 of certain special features of the Act could be
30 achieved through funds from general revenue, is made only



1 to emphasize the point we have made that costs cannot be
2 the obstacle to full needs of the workmen on compensation
3 being met.

4 I think we can now go on to page 14.

5 Recognition of heart disease, mental
6 illness and pure fatigue neurosis, as valid grounds for
7 compensation claims.

8 In selecting the three conditions
9 above, it is not intended to suggest that other condi-
10 tions which, in our view, give rise to disabilities, and
11 which are not today clearly recognized as compensable,
12 be excluded. On the contrary, the connection between
13 physical and mental problems, and our complex industrial
14 civilization should be under constant examination and
15 review, with no arbitrary or fixed limits placed on
16 disabilities which are, or could be compensable.

17 In 1964 the United States Department of
18 Health published a book entitled "Occupational Diseases -
19 A Guide to Their Recognition". In the Foreword to the
20 book, Dr. Harry Heimann, Chief of the Division of
21 Occupational Health, wrote:

22 "The tremendous technological
23 achievements of the past few decades
24 have greatly intensified the problem
25 of occupation disease detection and
26 control. Indeed, few, if any, of
27 the vast array of new products and
28 processes created by a dynamic
29 technology are without their
30 potential health hazards. As part



1 of the effort to produce new tools to
2 facilitate the discovery and prevention
3 of job-related illness, this guide is
4 offered to those responsible for
5 meeting the growing challenges of
6 occupational health."

7
8 The book deals almost exclusively with
9 physical substances and readily defined conditions which
10 we do not need to deal with in this submission. What we
11 are concerned with are the not so readily definable
12 conditions, and the relationship of same to disabilities
13 which have only recently been given serious thought and
14 attention in the field of occupational health.

15 The following brief references in the
16 introduction to the book are of interest:

17 "By continued vigilance regarding
18 the occupational history and the
19 hazards encountered, the medical
20 profession can use the occupational
21 findings more effectively in forming
22 judgments concerning disabilities
23 as well as in the diagnosis and treat-
24 ment of disease. In this way, the
25 physician may not only add to the
26 knowledge of occupational diseases
27 and disabilities but also to the
28 understanding of the possible part
29 played by work factors in the deve...



1 ment of aggravation of the diseases
2 and disabilities not usually associated
3 with the work environment. Thus, heart
4 disease is becoming prominent among
5 the claims submitted to workmen's
6 compensation agencies. In such
7 instances the difficult problem of
8 causal relation and disability
9 evaluation confronts the physician...

10 "Much thought was given to the
11 inclusion of a section on mental
12 illness in industry since it is well
13 known that mental disorders can
14 complicate occupational disease,
15 accidents, prolong disability, work
16 efficiency and job stability. An
17 example in this category is the
18 syndrome labelled traumatic neurosis,
19 a condition representing a post-
20 traumatic episode which is sequel
21 to severe physical injury or threat
22 of such injury, or of illness.

23 "Mental illnesses are less easily
24 recognized by the practitioner and
25 allied personnel in the field of
26 occupational health. The causes are
27 generally obscure and the diagnosis
28 and management of the disorder are
29 frequently dependent upon one skilled
30 in psychiatry.



"Thus, it is not possible to present the subject material in a manner paralleling the other more readily defined entities covered, except in the specific instances where acute or chronic mental disease is part of a pathological response to an environmental factor.

Omitting such a section, therefore, is not because of a lack of importance. Rather, it is felt that the subject merits far more detail than can be given in a book of this type."

In February 1963 the Financial Post carried a story which bears on the area under discussion. Excerpts follow:

"A U. S. compensation award for mental illness caused by industrial tension could have repercussions in Canada.

"The Supreme Court of Michigan recently ruled that a machine operator must be paid for psychotic illness resulting from emotional pressure of too much criticism, and too many instructions from his foreman.

"The case is reminiscent of the rash of U. S. compensation awards for heart attacks in industry and the much less spectacular but growing trend



1 toward leniency in Canadian heart
2 compensation claims.

3 "With mounting concern about
4 emotional stress in industry, the
5 U. S. trend could mean more psychia-
6 tric claims in Canada...The compensation
7 problem will not be as serious in
8 Canada unless provincial workmen's
9 compensation legislation is changed...
10 Provincial acts provide specifically
11 for types of claims that are
12 compensable. Mental illness is not
13 itself an accident, not specifically
14 outlined in sections dealing with
15 industrial diseases, and not a
16 disability 'peculiar to or charac-
17 teristic of' certain industrial
18 process -- does not seem to fit into
19 the compensation schedule. But neither
20 do heart cases. Yet claims and
21 awards for them are increasing."

22 While there does appear to be more
23 flexibility in approach on the part of the Board to heart
24 disease claims, it remains a most difficult, and at times
25 insurmountable type of claim to establish. More so does
26 this apply to mental and neurosis problems.

27 Some years ago we represented the family
28 of a member of this union who died under the following
29 circumstances: --- and I can give you the claim number if
30 you wish.



1 THE COMMISSIONER: You might do that if
2 you will.

3 MR. BROADFOOT: Claim No. 3613801.

4 The claimant had suffered a severe
5 injury to his right arm. His arm
6 was badly mangled and he was
7 hospitalized for a lengthy period.

8 After a number of surgical
9 operations he was discharged from
10 the hospital. While convalescing
11 at home he suffered a heart seizure
12 and died.

13 At the time of death he was
14 receiving compensation. Immediately
15 following death, compensation pay-
16 ments ceased and the Board informed
17 the widow that they had no further
18 responsibility in the case.

19 The position of the Board in this case
20 was that the cause of death was not the terrible injuries
21 this man had suffered; therefore, there was no obligation
22 under the Act. In a case such as this, we feel fully
23 justified in stating that the proper course would have
24 been to have accepted the assumption that the injuries
25 were a direct aggravation of the heart condition, and
26 therefore a cause of death at that time. The family
27 should have been entitled to the regular widow's and
28 dependent's allowances.

29 Another claim in which we are currently
30 interested, is that of the member of the union who has



1 been informed he will not be able to work again. He has
2 a heart condition, and suffers from arthritis. And the
3 claim No. is C-6341122.

4 His condition has seriously deteriorated
5 since suffering a compensable accident in February 1965
6 for which he now receives a permanent disability pension
7 of \$40.25 a month.

8 In this, and other claims of a similar
9 nature, we are of the strong opinion that the Board
10 cannot easily limit its responsibility. It seems to us that
11 the problem involves much more than the surface relation-
12 ship of the obvious, a compensable accident, to other
13 existing conditions. In such cases there is need, and
14 obligation, to carefully examine into the entire
15 occupational history of the claimant to determine as
16 conclusively as possible the whole circumstances to the
17 particular situation. This point is made in the book
18 "Occupational Diseases, etc." already referred to, as
19 follows:

20 "The examiner must, therefore,
21 be wholly mindful not only of the
22 present occupation, but of former
23 ones as well, since a patient
24 suffering from certain ailments
25 may no longer be engaged in the
26 occupation responsible for his
27 present condition."

28 The problems associated with the work
29 environment which, we believe, result in mental, nervous
30 and emotional illness, causing disability and time away



1 from work, are of paramount importance in this period of
2 revolutionary change in industrial technology, and the
3 era of automation which we are now only entering. They
4 require an entirely new approach and treatment on the
5 part of the authorities. To illustrate this point we
6 quote a letter from an employer, and a letter from the
7 Board to a workman claiming compensation. The letter from
8 the employer, dated May 12, 1965, stated --- and the
9 claim No. is 6329909:

10 "I am sorry to hear that you are
11 again unable to come to work. It
12 is apparent to the company that
13 you must have some problem about
14 which the company can be of little,
15 if any, assistance.

16 "When you returned for a
17 discussion last Monday, May 3, you
18 said that you felt fine, now that
19 the weather had improved. You
20 returned to work in Department 10,
21 which was the department you were
22 in when you went out sick.

23 "You worked for one week on
24 nights, and after coming back for
25 one night the second week you stayed
26 away and I hear you are again stating
27 the reason as 'the fumes'. You did
28 not say anything about this while
29 at work, and so far as the company
30 is aware, the only fumes involved



1 are ordinary industrial fumes, and
2 certainly nothing in particular from
3 the paint.

4 "It may be that the dampness
5 in the weather caused your problem,
6 or it may be something else. In any
7 event the company does not accept
8 that there is anything unusual at
9 our plant which is responsible for
10 your absence.

11 "We suggest that you get a
12 thorough medical examination to
13 determine whether or not you are
14 fit to work in a manufacturing
15 plant, or any other place which has
16 its own characteristics, such as
17 a hospital, laundry, etc.

18 "In reviewing the history of
19 this over the past number of months
20 the company has regretfully decided
21 that you are not to return until
22 you have a proper medical certificate
23 that you are fit to resume normal
24 duties in a normal industrial
25 atmosphere."

26 On May 27, 1965, the workman received the following from
27 the Board:

28 "We regret the delay in
29 adjudication, however this was
30 occasioned through the necessity to



1 obtain all available information in
2 order to give every consideration to
3 your claim.

4 "The evidence presently before us
5 does not disclose an association
6 between your respiratory problem and
7 your employment, accordingly your
8 claim is rejected as it has not been
9 shown that the disability arose out
10 of the employment...."

11 It may well be that the conditions of
12 work in the particular plant cannot be directly
13 associated with the respiratory problem of which this
14 workman complains. However, it is a very real problem to
15 the workman, even through it may be purely emotional,
16 as each time he returns to the job he finds it impossible
17 to remain and continue work.

18 Certainly the approach of the employer,
19 who quite without justification takes on the responsibility
20 of "diagnosing" the man's illness, has not been helpful.
21 The employer has refused this man a transfer to some
22 other occupation, which he felt would help solve his
23 problem.

24 Neither can the position taken by the
25 Board in this case be commended, in placing the only
26 emphasis on "evidence", and without any apparent attempt
27 to probe in depth the problem which could well exist.

28 In this area of mental and emotional
29 problems it may be of advantage to quote from an
30 European source, where apparently research has been



1 conducted on quite an extensive scale, and at a relatively
2 early date compared to what appears to be the case in
3 North America. The Journal of the International
4 Association for the Study of Living Conditions and
5 Health, published in Vienna, Austria, Vol. 1, No. 4, 1959,
6 contains an article entitled "Pure Fatigue Neurosis and
7 New Industrial Production Methods". We find this
8 article of great interest, particularly the following
9 extract:

10 "The following observations
11 were made on workers and clerks
12 of the Fiat motor-car works in
13 Turin in the neuro-psychiatric out-
14 patients clinic of the Fiat medical
15 service and in the Psycho-
16 Therapeutic Clinic of Turin University.

17 "Most of our cases were neuroses.
18 It is practical and possible to
19 separate the category of 'pure
20 fatigue' neurosis from this group.

21 "'Pure fatigue' neurosis is a
22 neurotic disease similar to the
23 'nervous fatigue syndrome' conditioned,
24 above all, by nervous stress caused
25 by occupational working conditions....

26 "Here is a typical case to
27 illustrate the foregoing:

28 "G. C. is a metalworker, single,
29 20 years, athletic build, born in the
30 province of Turin.



1 "Family and personal anamnesis
2 irrelevant. Never suffered from
3 nervous disorders. An active sports-
4 man since childhood. After completing
5 elementary school became factory
6 worker at the age of 12; started as
7 mechanic's apprentice, later skilled
8 smelter in an iron works.

9 " In spring 1955, the patient was
10 given the job of operating new semi-
11 automatic machine which had been
12 installed for trial purposes in the
13 tube production workshop. During the
14 process he is seated on a comfortable
15 chair and the work he performs requires
16 no physical effort (in contrast to
17 the heavy work he previously carried
18 out). It consists in operating
19 various hand and pedal switches,
20 supervising a series of many-colored
21 light signals and controlling two
22 revolution counters. It is difficult
23 to individualize all the single acts
24 which comprise the functional activity.
25 There are 14 altogether and these are
26 repeated in the same order. The tempo
27 of the process is forcibly determined
28 by the functional rhythm of the machine.
29 At high speed, the 14 single acts
30 require about two seconds.



"The patient worked in this way for eight hours a day and six days a week. Within the first month he began to suffer from symptoms of pathological nervous fatigue which he had not experienced before -- disturbances in sleep and appetite, nervous tension and asthenia. At that stage he told his employer that he would not be able to carry on with the job for a long time. After two months at the new machine, the patient discontinued sportive activity as he was exhausted at the end of the day, and also gave up sexual activity almost entirely. A strongly-marked fatigue neurosis with generalized anxiety, irritability, depression and loss of weight had developed in the meantime. The patient repeatedly requested the works' management either to reduce the tempo of work, shorten his working time, or transfer him to other employment -- without success.

"One afternoon in December, 1955 he suddenly fainted during working hours, fell off his stool without injury and was sent to hospital... Clinical and laboratory examinations showed no pathological organic



1 disorders and after four days, the
2 patient was released from hospital and
3 transferred to a health insurance
4 nerve specialist...He diagnosed
5 'psycho-asthenia' and prescribed
6 rest and sedative. The pathological
7 symptoms disappeared after a few
8 weeks treatment at the clinic....
9 The patient resumed his sportive,
10 sexual and social activities and
11 returned to work as he was the only
12 wage-earner in the family. At the
13 end of March 1956 he took up his
14 former employment as smelter. He
15 was considered to be completely
16 cured by us at the end of June.
17 The nervous disorder had disappeared
18 and his weight was only 2 kg under
19 normal in spite of the muscular and
20 caloric stress of his work."

21 "In summarizing one can say
22 that G. C.'s disease was an extreme
23 border case of pure fatigue neurosis
24 which essentially took the course
25 of a neurasthenic-depressive syndrome,
26 leading to an acute nervous break-
27 down and ending in a complete cure."

28 We would ask the Commission to compare
29 the careful, methodical, and successful methods employed
30



1 in the case quoted above to that of the method apparently
2 adopted by the Board in the case of the workman with the
3 respiratory problem, real or imagined, which we have also
4 quoted.

5 Our purpose in quoting at length on this
6 area is to underline the necessity of amendment to the
7 Act, so that any barrier or restriction to an up-to-date
8 approach to illnesses of the type dealt with be removed,
9 permitting the payment of compensation, and thereby
10 introducing a compulsion on employers to accept
11 responsibility for remedial and preventive measures on a
12 far broader basis than exists today.

13 THE COMMISSIONER: What barrier or
14 restriction is there in the Act which you refer to?

15 MR. BROADFOOT: This is as regards
16 mental health.

17 THE COMMISSIONER: Well, the Board is
18 authorized to deal with such cases. Your complaint is
19 the manner in which they deal with them.

20 MR. BROADFOOT: What we feel is that the
21 Board recommends psychiatric treatment, but it is only
22 on a confined basis. It is not a basis which we think
23 would make the patient fully recover.

24 THE COMMISSIONER: The only purpose of
25 my question is there is not in the Act itself any
26 barrier or restriction on this matter, is there?

27 MR. BROADFOOT: There is nothing in the
28 Act period. There is nothing to say we can or we can't.

29 THE COMMISSIONER: They can consider it
30 as something arising from his employment.



1 MR. BROADFOOT: Once they vary from the
2 conditions of the Act, then a person's compensable
3 injury, or for a person injured, in a medical examination
4 they would say he would physically be able to work and
5 the claimant would claim that she still had pain. We
6 had quite a fight to try to say that the workman had pain
7 because the Board implied to us on some occasions that
8 it was definitely in the girl's head and that she was
9 imagining this pain. That is how we feel in this part
10 of the brief that this is not covered within the Act.
11 It is not emphasized.

12 THE COMMISSIONER: It is one of the
13 considerations. This memorandum that was filed yesterday
14 and the psychiatrist that we heard yesterday
15 indicated that they were well aware of these things,
16 either neuroses that they were having to try and
17 evaluate or try and correct and get the man back to work
18 if possible.

19 MR. BROADFOOT: I was reading the
20 Workmen's Compensation Board brief yesterday on different
21 types of neuroses. I never came across one mention in
22 their brief as regards the condition in Turin, where
23 it was classed as fatigue neurosis caused by working
24 conditions. The brief is trying to explain the repeti-
25 tiveness of the working conditions of the man employed
26 and should be treated as a work-caused condition. It was
27 not an accident, it was just a condition, as we tried to
28 imply. With this modern-day technological advance and
29 mechanization people are performing similar operations to
30 the man we referred to within the plants and we think this



1 is a tendency which can easily happen very, very often,
2 and this may be part and parcel of the increase in mental
3 illness concerning some people's occupations.

4 MR. GUTHRIE: Just on that point, Mr.
5 Broadfoot, I wonder can Dr. Powell just from his place
6 tell us what the Board would have done in the Turin case
7 and whether his neurosis falls into that paper he
8 presented yesterday.

9 DR. POWELL: In this particular instance
10 I don't think we would have allowed this particular claim.
11 However, should there have been an associated accident or
12 incident that we could attribute to his work (This
13 fatigue neurosis, for instance, is the same as an anxiety
14 state. We can't put a name to one, soldier's heart type
15 of thing or neurosthenia and that type of thing) out in
16 this instance if there had been some way that we would
17 have assisted this man over this particular area and had
18 a psychiatrist see him and assess him -- often it is
19 now not necessary for a psychiatrist. Even the personnel
20 manager of the plant could help him over this particular
21 area, but in most instances we don't know what this man
22 was doing outside of work. I mean, this is an incomplete
23 history, for example. We don't know the man's previous
24 makeup, his previous history. We presume it was
25 satisfactory. He works eight hours a day at work, but we
26 don't know what his condition was in his off time, what
27 he did in his off time, what his home conditions were,
28 and we could assume, I daresay, that they were reasonably
29 satisfactory, but there are many facets of this that you
30 have to go into. By and large, Mr. Guthrie, in the way



1 this is quoted we would not have allowed this claim.

2 THE COMMISSIONER: The thing is under
3 the definition of accident as "disablement arising out of
4 and in the course of employment." If you were satisfied
5 that this was a psychotic condition or neurotic
6 condition that arose because of the pressure under which
7 this man operated there is nothing to prevent you or you
8 would be quite entitled to award him compensation, would
9 you not?

10 DR. POWELL: Compensation consideration,
11 provided if he was seen and assessed by a psychiatrist
12 such, yes.

13 THE COMMISSIONER: Because it must be
14 true, Doctor, that there are ---- this is probably a good
15 example of circumstances under which one is doing very
16 repetitive work and under high pressure it could affect
17 his physical condition.

18 DR. POWELL: I am sure and I am sure that
19 the industrial physician if there was one associated
20 with the plant or someone in this category would have
21 been looking at this, the number of motions, fourteen in
22 two seconds. To me I just don't follow it at all. I
23 think this is a field where in this field physicians
24 employed do everything they can to make sure this type
25 of thing does not occur, that is in the straight physical
26 stress that you mentioned. I agree this is a problem and
27 I think it is probably increasing in certain areas of
28 production. This has to do with modification of tools
29 as well and making sure that a workman is not doing a
30 repetitive job in a cramped or unusual manner. This will



1 probably come up in accident prevention, that tools would
2 help the worker from working in a cramped position to do
3 that type of work, but this mental stress and that sort
4 of thing, we speak about people in business, executives who
5 break down with strain and we hear a lot of this about
6 heart disease amongst executives, but when an analysis is
7 made of all the executives by and large most of them are
8 in much better physical condition than any other group.
9 However, some do come to grief, but it would appear that
10 it is on the increase when actually in effect when it is
11 analyzed fatigue and breakdown amongst executives is not
12 nearly as high as one would think.

13 THE COMMISSIONER: You don't have any
14 trouble with executives in the Workmen's Compensation
15 Board?

16 DR. POWELL: Occasionally, yes.

17 MR. BROADFOOT: You were speaking of the
18 fourteen movements in two seconds. I work in a lamp-
19 making plant in Toronto and I see girls operating
20 machines and I would say they do possibly eight to each
21 second in operations. The person becomes so used to the
22 operations they are using two hands all day and I would
23 say to me it is a repetitive job, and I can't see any
24 board saying that on new tooling the company should avoid
25 this because there is no other way the job could be done
26 unless it is to bring in full automation and then they
27 would be expendable. This is a job that girls do every
28 day in the week, and once they stop for a break it takes
29 them a while to get back into the rhythm again. It is a
30 constant rhythm. It reminds me very much of the old



Nethercut & Young

Toronto, Ontario

1059

1 "Modern Times" movie of Charlie Chaplin taking a bolt out,
2 and this is very similar to it. These are jobs that are
3 performed amongst women in the plants. I know I hold
4 myself very close officially with women in regard to their
5 problems and so on, and I would say there is a very high
6 rise in women having mental breakdowns or nervous break-
7 downs and if you look at it closely now there is a certain
8 association with the job.



5/BL/SS

1 We often go in to the Board on different
2 cases and we have had remarks passed to us by the Board
3 that there is a definite tendency in the women in the
4 plants we represent that they are malingering, and we
5 think that the jobs these girls do in our plants --- it
6 is called --- I am only a layman --- it is the repetitive
7 nature of the job that creates it, in the type of work.
8 We have had claims and the person has been told they are
9 physically fit for work and there is no pain there
10 physically, but they come back a year later and they are
11 given a pension, because initially the thinking of the
12 Board was that it was a mental pain, it wasn't an actual
13 pain. So we think there is a definite trend in industry
14 of fatigue neurosis or anxiety neurosis in the work based
15 on speed-up of conditions in the plant.

16 MR. GUTHRIE: Mr. Broadfoot, to go back
17 to your section on pre-existing conditions, we saw
18 yesterday a sample agreement between the Mine, Mill and
19 the Steelworkers on this subject, and I wondered if you
20 took the same position, namely, that the recommendation
21 of Mr. Justice Roach be followed. Are you familiar with
22 it?

23 MR. BROADFOOT: I am not familiar with
24 it.

25 MR. GUTHRIE: Without going into that,
26 I don't see a great deal of difference between your
27 submission and the other unions. Am I putting it fairly?

28 MR. BROADFOOT: Yes.

29 MR. GUTHRIE: If I may come to this
30 section on mental illness and fatigue neurosis, page 17,



1 the claim you refer to at the bottom, the man who has a
2 heart condition and suffers from arthritis. Can you tell
3 us what occupation he is in?

4 MR. BROADFOOT: Well, I hadn't been
5 dealing with this claim personally, but I can give the
6 information to the Commission.

7 MR. GUTHRIE: Can you tell us the
8 injury he was compensated for in February, 1965? It is
9 really hard to appraise the weight of that point without
10 knowing those two things. He is receiving a permanent
11 award of \$40 a month.

12 MR. BROADFOOT: I think we could get
13 that information. The file number quotes quite a history
14 on the man.

15 MR. GUTHRIE: You haven't got it here,
16 at any rate?

17 MR. BROADFOOT: No, I haven't got it here.

18 MR. GUTHRIE: Then there is the man with
19 the respiratory problem referred to at page 19. Are you
20 familiar with just what his complaint was? Was it an
21 asthma, for example, caused by dust or fumes?

22 MR. BROADFOOT: This wasn't one of our
23 plants, but it was part of our union. I could get that
24 information this afternoon.

25 MR. GUTHRIE: We heard yesterday, for
26 example, that asthmatic complaints are usually the result
27 of an allergy. I think we would need there to know what
28 the complaint was, or it is rather difficult to judge
29 the case.

30 On page 20 you say:



1 "Neither can the position taken
2 by the Board in this case be commen-
3 ded, in placing the only emphasis
4 on 'evidence'" ---

5 I am just wondering from the Board's viewpoint what more
6 they can look at.

7 MR. BROADFOOT: I think the implication
8 here is that they only went on the evidence they had; they
9 didn't attempt to probe into the past history of the man
10 which may have caused the condtion.

11 MR. GUTHRIE: You mean there may have
12 been an omission on the part of the Board?

13 MR. BROADFOOT: Yes.

14 MR. GUTHRIE: But they would have to be
15 alerted to it by something the man said or the doctor
16 said.

17 MR. BROADFOOT: Yes, I guess you are
18 right there.

19 MR. GUTHRIE: We heard from Dr. Powell
20 that where a psychiatric condition exists, if the Board
21 is shown that they will order treatment on a psychiatric
22 basis, but surely they must be alerted to the problem.

23 MR. BROADFOOT: We have been told by
24 the Board also on psychiatric treatment that they advise
25 the patient to go, but they don't guarantee payment. Now,
26 if you are handling a psychiatric case and the girl is
27 complaining of a pain in the arm and you say, "Well,
28 according to the Board's thinking you have to go to a
29 psychiatrist" ---

30 MR. GUTHRIE: Is that getting more to



1 the root of the problem, that the Board will not recognize
2 it for payment?

3 MR. BROADFOOT: For payment, yes.

4 MR. GUTHRIE: Then at the end of your
5 section on page 23 the Commissioner started into the same
6 point that was troubling me, which is, any barrier or
7 restriction in the Act, and I am not sure that you
8 referred us to it, but in the same sentence you also
9 underline the necessity for amendment to the Act. I
10 wondered if your union wanted to be more specific as to
11 what amendment may be needed.

12 MR. BROADFOOT: Well, they are looking
13 to the introduction of defining neurosis as part of an
14 occupational hazard of the man's occupation, a condition
15 being compensable as to repetitive work. There is nothing
16 to say that it can't create it.

17 MR. GUTHRIE: Would you go so far as to
18 say that that should be a matter in Schedule 3, neurosis?

19 MR. BROADFOOT: Yes.

20 MR. GUTHRIE: And the process would be
21 described as under repetitive work?

22 MR. BROADFOOT: Yes.

23 MR. GUTHRIE: There is no other
24 particular amendment you had in mind, Mr. Broadfoot?

25 MR. BROADFOOT: No, nothing else. But we
26 feel that this is a field that the Board should look into
27 and give some thought to it.

28 MR. GUTHRIE: Thank you, Mr. Broadfoot.

29 Mr. Commissioner, Dr. Powell has
30 indicated that he and his colleague would be prepared at



1 this time to deal with the question of silicosis, as we
2 have heard a good deal about it in the last two days,
3 and this might be a convenient time to do it.

4 THE COMMISSIONER: Yes, Dr. Powell.

5 DR. POWELL: Mr. Commissioner, I have
6 brought with me Dr. Brennan, who is chief of our Chest
7 Services and who would be prepared to answer any questions
8 related to the management of the silicotic.

9 I would like to mention our handling of
10 silicosis and our management of this problem.

11 PROVISIONS OF THE ACT

12
13 Under the terms of the Act "silicosis"
14 means a fibrotic condition of the lungs sufficient to
15 produce a lessened capacity for work, caused by inhalation
16 of silica dust.

17 ENTITLEMENT TO COMPENSATION

18
19 To qualify for benefits, a workman must
20 have been exposed to silica dust for two years in his
21 employment in Ontario and must have been a resident of
22 Ontario for at least three years prior to disablement
23 except where the Board is satisfied that the silicosis was
24 not caused by anything other than his work in Ontario.

25 MINERS' CHEST EXAMINING STATIONS

26
27 The Board maintains Chest Examining
28 Stations in Sudbury, Timmins, Kirkland Lake, Fort William
29 and Elliot Lake, and portable units travel to mines in
30 other areas. Their purpose is to administer that portion



1 of the Ontario Mining Act which requires that anyone who
2 works in a mine in exposure to silica dust must be
3 certified as physically suited to do so.

4 Miners are examined on commencing
5 employment and annually thereafter. The cost of
6 administration of the Chest Examining Stations is assessed
7 to the mining industry.

8
9 SILICOSIS REFEREE BOARD

10 All workmen whose medical examinations
11 show early evidence of dust effects must be further
12 examined by the Silicosis Review Board comprised of
13 three independent specialists and one consultant who
14 review the Board's X-ray and diagnostic data in addition
15 to examining the workman. Following examination, the
16 Referee Board issues a report of findings and opinions
17 stating the diagnosis and degree of disability.

18
19 BENEFITS IN SILICOSIS CLAIMS

20 When a diagnosis of silicosis has been
21 made, the workman is entitled to benefits including
22 medical aid and consideration of payment of compensation
23 at the rate of disability established and on the basis
24 of earnings in the last twelve months of exposure to
25 silica dust.

26
27 SILICOSIS ASSESSMENT

28 Assessments levied on the mining and
29 other industry where silicosis occurs provide the funds
30 for payment of silicosis claims.

PREVENTIVE MEASURES

The incidence of silicosis in Ontario is steadily declining due to preventive measures and medical control. Statistics show a downward trend in silicosis cases yearly since 1933. In 1933, the incidence was 6.5 cases per 1000 mining employees with five years' exposure. By 1965, this figure had dropped to 0.9 per 1000.

VOCATIONAL REHABILITATION ASSISTANCE

In addition to medical aid and compensation, silicotic workmen may require a major change in occupation to return them to a productive role in the community. The Board's Vocational Rehabilitation Department will provide social and vocational counselling and retraining, selective placement in employment, and vocational retraining.

RELATED CHEST CONDITIONS

The combined efforts of the Workmen's Compensation Board and its Silicosis Referee Board, the Ontario Mining Association, and the Department of Health aid in the reduction of silicosis and other related chest conditions. Where workmen develop complicating disease, such as tuberculosis, they are treated in co-operation with provincial chest clinics.

There was, sir, I believe, a question this morning as to what advice a workman having silicosis might expect to hear. Dr. Brennan.

MR. GUTHRIE: I was interested, Dr.



1 Brennan, in knowing just what occurs when the chest X-ray
2 shows a silicotic condition. We understand that if the
3 man already has obtained his miner's certificate it is a
4 matter of choice whether he continues to mine. Is there
5 any advice given by the Examiners or the Board to that
6 man?

7 DR. BRENNAN: When the man first
8 develops silicosis, it is on his X-ray that he has
9 silicosis, and we have him in and talk to him, advise
10 him that while he may file a claim he should not
11 necessarily leave employment, that he may not have a
12 disability, that he may be able to work as well under the
13 provisions of the Mining Act which only allow us to
14 cancel his certificate for tuberculosis. We would allow
15 him to continue in employment as long as he wishes. But
16 we may with certain individuals, for instance, a younger
17 individual where we believe his silicosis has advanced
18 rapidly, that it would be in his interest to seek other
19 employment; and following examination by the Referee
20 Board it may be that we can rehabilitate him if he cannot
21 find the possibility of rebuilding himself in other
22 employment and wishes to do so.

23 MR. GUTHRIE: It is at that point that
24 the Board's Rehabilitation Department referred to in this
25 memorandum would come into play?

26 DR. BRENNAN: Yes.

27 THE COMMISSIONER: Dr. Brennan, do you
28 sit on the Referee Board?

29 DR. BRENNAN: No.

30 THE COMMISSIONER: Did you hear Dr.



1 Sutherland's evidence?

2 DR. BRENNAN: Yes.

3 THE COMMISSIONER: He is strongly of the
4 opinion that the decision of that Board should be final
5 so far as the medical aspect of it, claims are concerned.

6 DR. BRENNAN: I serve as the liaison
7 officer between the Referee Board and the Board. On any
8 claims that are appealed, we review the circumstances
9 with the Referee Board and make an appropriate
10 recommendation to the Board, to the Review Committee or
11 the Appeal Tribunal, as the case may be.

12 THE COMMISSIONER: I asked him if he
13 knew of any cases where the recommendation of the Board
14 hadn't been accepted by you, and he said there had been
15 some. But I would expect that you would accept their
16 recommendations.

17 DR. BRENNAN: I think over a period of
18 25 years there have been two claims in which the Board
19 has not accepted their recommendation.

20 THE COMMISSIONER: So it is not a very
21 serious matter, if you make a practice of accepting those
22 recommendations?

23 DR. BRENNAN: They may have included a
24 death claim which was allowed by the Board. The
25 Silicosis Board is not ordinarily required to deal with
26 the cause of death, as to whether it is related to a
27 compensable disease.

28 THE COMMISSIONER: They assess living
29 claimants?

30 DR. BRENNAN: Yes.



1 THE COMMISSIONER: I suppose if you had
2 the benefit of a post mortem on a death claim you would
3 be in a better position than anyone to assess it.

4 DR. BRENNAN: Yes. It is not infrequent
5 that we discuss the death claim with the Review Board,
6 reviewing all the evidence they have as well as evidence
7 submitted to the Board, and including the X-ray films
8 which are available both at our examining stations and
9 at the Referee Board.

10 THE COMMISSIONER: You are the silicosis
11 expert on the Workmen's Compensation Board, are you?

12 DR. BRENNAN: Yes.

13 THE COMMISSIONER: In these silicosis
14 cases do all of them go to the Referee Board or do you
15 make many of your decisions without them going to the
16 Referee Board at all?

17 DR. BRENNAN: There are a good number
18 that do not go to the Silicosis Referee Board. Does it
19 show evidence of pulmonary disability? Does it show
20 evidence of other disability which may be confused with
21 silicosis, such as a cardiac disease, and in order to
22 clarify the matter now rather than later we have them
23 looked into by the Silicosis Board.

24 THE COMMISSIONER: You have them clarified
25 when there is a question of that. When you mention
26 cardiac failure and other matters, that is where the
27 relationship might be questionable.

28 DR. BRENNAN: Yes. If there is any doubt
29 at all in the findings we have the claimant seen by the
30 Silicosis Referee Board.



1 MR. GUTHRIE: What is an example of a
2 case that would not go to that board?

3 DR. BRENNAN: The findings would be that
4 --- if the X-ray films are absolutely normal and he has
5 no symptoms or evidence of other disease such as any
6 cardiac disease that is giving him any disability. The
7 main evidence, of course, is the X-ray films, and
8 they suggest anything apart from silicosis, such as
9 emphysema, well, we have those cases, of course, seen
10 the Referee Board.

11 MR. GUTHRIE: Would you look at the
12 paragraph of your memorandum headed "Silicosis Referee
13 Board". It states -

14 "All workmen whose medical
15 examinations show early evidence
16 of dust effects must be further
17 examined by the Silicosis Referee
18 Board..."

19 Now, that is an automatic matter whether or not the
20 workman has filed a claim for compensation. Is that so?

21 DR. BRENNAN: We only have workmen
22 examined by the Referee Board if he has filed a claim.

23 MR. GUTHRIE: You say he is examined
24 further whether he likes it or not, but these are just
25 claimants.

26 DR. BRENNAN: Yes.

27 MR. GUTHRIE: Under the benefits, the
28 man might be correctly holding a miner's certificate,
29 allowed a pension for partial disability and still
30 continue at work. Is that so?



1 DR BRENNAN: Compensation is only paid to
2 workmen who leave the industry or have a loss of earnings.
3 If they continue to be employed and have no loss of
4 earnings, they are not paid compensation.

5 THE COMMISSIONER: That is what I
6 understood. There are many cases, apparently, where you
7 realize there is some silicosis, but the man has continued
8 to work.

9 DR. BRENNAN: Yes.

10 THE COMMISSIONER: Sometimes he continues
11 to work to the end of his working days, I understand.

12 DR. BRENNAN: Yes.

13 THE COMMISSIONER: It proceeds at
14 different rates in different people. You might have a
15 minor infection throughout your working days and it is
16 not enough to do any harm.

17 DR. BRENNAN: We don't believe that the
18 silicotic may necessarily deteriorate from his silicosis.
19 He may stay in a dust-exposure occupation and it may
20 stabilize.

21 THE COMMISSIONER: But having been
22 diagnosed, if later on his condition deteriorates and he
23 applies for a pension, if there is an illness, the
24 silicosis was there as an early factor.

25 DR. BRENNAN: Yes.

26 THE COMMISSIONER: Otherwise he doesn't
27 get compensation as he continues to work.

28 DR. BRENNAN: Yes. In many cases it is
29 much better if he does continue employment than not.

30 MR. GUTHRIE: Dr. Brennan, in the case of



1 a death claim arising from silicosis, there was a
2 recommendation this morning by the Mining Association
3 that a post mortem examination be required in every case.
4 Now, under the present practice, what is your opinion
5 on that recommendation?

6 DR. BRENNAN: We feel there is some
7 indication for any claimant to have a post mortem. On the
8 findings of the Silicosis Referee Board or with their
9 recommendation we write to the attending physician and
10 advise him, not at the present time, but we would like him
11 to keep it in mind and if at all possible get an autopsy,
12 but we can't say that he must have an autopsy. I do not
13 believe that it is possible for various reasons to make
14 that requirement in allowing a death claim. There are
15 some religious objections and other reasons. I don't
16 believe we can make that requirement.

17 MR. GUTHRIE: It is principally a matter
18 of consent of the family, and so on?

19 DR. BRENNAN: Yes.

20 MR. GUTHRIE: Can you assist us on this
21 question of reciprocal agreements? Do you see that that
22 is something that could be worked out if the authority
23 was there and there was cooperation with the other
24 provinces?

25 DR. BRENNAN: I don't believe that pro-
26 rating of claims in every case is practical, not because
27 of objection, but because of the amount of work concerned.
28 We at the present time take on every claim which has two
29 years' exposure in Ontario, part of which may be the last
30 exposure. While we have subscribed to pro-rating, it



1 would seem that it should be on a limited basis.

2 MR. GUTHRIE: Limited to which cases?

3 DR. BRENNAN: I would refer to claims
4 which cannot be allowed in any province.

5 MR. GUTHRIE: Supposing we had a two-year
6 period in every province and the man had four months'
7 exposure in every province, it is this sort of thing?

8 DR. BRENNAN: Yes, that could be one.
9 Pro-rating is not practical yet until all provinces make
10 their regulations uniform. The only two clauses now ---
11 there is the two-year exposure and the residence clause,
12 and the residence clause is very broad. Quebec has a
13 five-year requirement for the claimant who filed a claim
14 within five years of leaving a dust-exposure employment,
15 and that can conceivably reject a claim. There was one
16 case of a man who worked for nine years until 1933 and
17 he went to Quebec and worked for another nine years. He
18 filed a claim in Quebec in 1949 and the claim was
19 rejected. That is the type of claim which is rejected by
20 the Quebec Board, and that is the type of claim where, if
21 the reverse situation was in Ontario, we could allow that
22 claim because we did not have the clause of requiring it
23 to be filed within five years.

24 MR. GUTHRIE: Can you explain the
25 question of the time limit in Ontario, Dr. Brennan?
26 It was referred to yesterday and it was said that there
27 was some intricate reading of perhaps Sections 21 and
28 116 that had to be done. Can you help us with that?

29 DR. BRENNAN: I would say that Section 21
30 does not necessarily need to apply to silicosis. When you



1 read Section 116 (1), it says: "disablement is the
2 happening of the accident".

3 MR. GUTHRIE: Would not Section 21 still
4 come into play then? It reads: "Subject to the
5 ~~subsection 5~~, compensation or medical aid is not payable
6 unless notice of the accident" --- and we would have to
7 read after "disablement" --- "is given as soon as
8 practicable after the happening of it". I suppose the
9 question is when the disablement started.

10 THE COMMISSIONER: Section 116 in your
11 opinion solves all questions as to the happening of the
12 accident. It is as long as it is taken as the date of
13 the happening of the accident.

14 MR. GUTHRIE: Is it at any point during
15 the period?

16 DR. BRENNAN: Yes. Silicosis became
17 a compensable disease for miners on April 8th, 1926,
18 and for other industries on June the 1st, 1926, and this
19 interpretation is any claimant having any disability
20 after that date would have exposure before it became a
21 compensable disease. Miners' phthisis became a
22 compensable disease in 1933, but there are very few
23 claims filed under that regulation.

24 MR. GUTHRIE: Let's take the man whose
25 first exposure was in 1935 and he had a miner's
26 certificate at the time, and in 1945 his X-ray indicated
27 for the first time a silicotic condition, and he
28 continued to work. If he now leaves the employment
29 because of disablement, can he now file a claim?

30 DR. BRENNAN: Yes.



1 MR. GUTHRIE: Mr. Commissioner, Mr. Kerr
2 has indicated that he could perhaps assist us on this
3 point from the claims adjudication aspect.

4 MR. KERR: Mr. Commissioner, if I may
5 elaborate a little on what Dr. Brennan said.

6 The point has been established in Section
7 116 (1) that the disablement was the happening of the
8 accident, so that Section 21 comes into play there, that
9 the report or notice of accident, as it is called in
10 silicosis cases, should be given six months after the
11 date of the disablement, which is usually a current date.
12 Section 21 says that notice of accident must be given
13 before the man voluntarily leaves employment. This does
14 not apply in industrial diseases, because in Section 116
15 (6) it indicates that notice can be given even after the
16 man has left the employment.

17 The other important section which applies
18 is Section 21 (5) where the Board has authority to allow
19 a claim even though it has not been reported within the
20 specified period of time. It is rather an interplay of
21 the two sections. It is a little confusing at first.

22 THE COMMISSIONER: These are the
23 recommendations of the Silicosis Committee, and five of
24 them have been adopted in Ontario. Are there any others
25 that could be adopted here? The first one, minimum
26 exposure period of two years, we have that now. No time
27 limitation for filing a claim. You say that we have that
28 now. 3, that the present limiting clauses as to residence
29 should be abolished. 4, that adequate work records be
30 kept. Do we have work records of all kinds?



Nethercut & Young

1876

Toronto, Ontario

DR. BRENNAN: We have records in the
miner chest examining stations on his chest and the
exposure he has had on employment, and annually we make
a record of his chest exposure, since his last examination.



FN/SS

1 THE COMMISSIONER: Actually that is in
2 practice there.

3 DR. BRENNAN: Yes. If we have to
4 confirm it we have to get in touch with the individual
5 mine involved.

6 THE COMMISSIONER: Then the annual
7 re-examination of his chest, that each employee should
8 have an annual examination and periodic dust count.
9 Adequate control measures appear to be in existence in
10 Ontario, and the last one authority to make agreements
11 with each other in respect of claim

12 exposure in more than one province. That enabling
13 legislation has not been passed by all provinces, has

14 DR. BRENNAN: No.

15 THE COMMISSIONER: So it would appear
16 that so far as possible the recommendations of the
17 Silicosis Committee have been more or less dealt with,
18 that would seem to be the case?

19 DR. BRENNAN: Yes.

20 THE COMMISSIONER: I don't think I have
21 anything more, Doctor. Have you, Mr. Guthrie

22 DR. GUTHRIE: No, I have nothing more.

23 THE COMMISSIONER: Unless you have any-
24 thing to add to what Dr. Sutherland said yesterday. He
25 gave us a very full report.

26 DR. BRENNAN: I don't think so, sir.

27 MR. GUTHRIE: Mr. Commissioner, the next
28 brief to be presented is that of the International
29 Labourers, but they have indicated that two o'clock would
30 be more convenient, and that some of their members had to



1 return to the office to obtain some
2 here at the present time. Although it
3 it might be a convenient time to adjourn.

4 THE COMMISSIONER: Yes.
5 adjourn nevertheless until ten minutes
6 two o'clock.

7
8 ---At 1:45 the Hearing adjourned until 1:55
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30



1
2
3
4
5
6
7 with industrial diseases and medical treatment.
8 refer to our brief at page 4, before reading, I should
9 point out to you, sir, that the Labour
10 employ a physician and as a result they are somewhat at
11
12 you in connection with medical treatment. On
13 hand, the Labourers' Union because of the nature of the
14 work performed by a majority of or many of its members
15 they are somewhat concerned in caisson disease.
16 indicated in our brief, Dr. Gamarra, affiliated with the
17 Toronto East General Hospital has undertaken a re
18 into this disease and has been doing so for the past year
19 and a half and as a result of a certain conversation
20 between Dr. Gamarra and some of my clients we have be
21 able to obtain certain pieces of infor
22 have included in our brief and I will elaborate as I
23 proceed. If I may read, then, from page 4 of the brief.

24 A. INDUSTRIAL DISEASES

25 (1) Caisson Disease

26 Section 116 (8) and Schedule 3 of the
27 Workmen's Compensation Act provide for compensation for
28 certain industrial diseases contracted by a workman due
29 to the nature of his employment. Once a parti
30 disease in Schedule 3 is contracted by a workman, engaged



1 in any process mentioned in the second column of the
2 Schedule, there is a rebuttal presumption as to the
3 particular disease being due to the nature of employment.
4 Unfortunately, some serious industrial diseases are very
5 difficult to immediately identify and diagnose, and often
6 other diseases and disabilities are suffered through
7 the unknown causal effect of the more serious, but latent
8 disease. Further, once the more serious disease is
9 diagnosed, it is still difficult to determine the degree
10 of permanent disability and the extent of necessary
11 compensation.

12 In the past, many members of Local 183
13 of the Labourers' Union have suffered severely from the
14 effects of Caisson disease as a result of work carried
15 on in compressed air. And I may say at this point, Mr.
16 Commissioner, that we are referring mainly at the moment
17 to the type of work being carried on in connection with
18 the construction of subways where they are working under-
19 ground, for example, the University Avenue extension of
20 the subway and also the present Bloor subway which is
21 still under construction. Although this disease is
22 compensable by virtue of its inclusion in Schedule 3,
23 it is very difficult to detect the disease and many men
24 have not realized that they have contracted it or have
25 not been able to attribute resulting diseases or
26 disabilities to its initial causal effect for purposes of
27 compensation.

28 The disease is contracted by men working
29 on tunnel construction sites, where compressed air is
30 required to shore up water and sand in underground



1 excavations. The regulation under the Department of Labour
2 Act permits up to fifty pounds pressure, and workmen in
3 the Toronto area have been known to have worked in
4 pressurized tunnels up to forty-eight pounds. This
5 extreme pressure on the human body causes tiny bubbles
6 to form under the skin which, in turn, affect joints,
7 blood vessels, balance, and often lead to a general
8 deterioration of the body. However, these general
9 symptoms of the disease do not often come to light for
10 several months or even years after the disease has been
11 contracted.

12 Mr. Commissioner, I am going to refer
13 again to the particular regulation under the Act, and
14 perhaps it would be appropriate if at this time I filed
15 a copy with you.

16 MR. GUTHRIE: Is that Regulation 100 of
17 1963?

18 MR. KOSKIE: That is right, under the
19 Department of Labour Act, and at page 160 I will be
20 referring mainly to the provisions there.

21 The present practice of most employers
22 using compressed air, under provisions 106 - 112 of the
23 Regulation made under the Department of Labour Act, is to
24 give each man a very brief --- and I underscore "very
25 brief" --- medical examination before sending him into
26 the tunnel, and to make out a minimal medical report
27 under provision 111. In many instances, these examina-
28 tions are very superficial, with as many as twenty men
29 being examined by one doctor in the space of half an
30 hour.



1 THE COMMISSIONER: Before we get on,
2 then, let us look at this. Is there a regulation
3 requiring this medical examination?

4 MR. KOSKIE: Yes, there is.

5 THE COMMISSIONER: This is the one you
6 refer to?

7 MR. KOSKIE: I am going to comment on
8 that, yes.

9 THE COMMISSIONER: That is number what?

10 MR. KOSKIE: That is Regulation 106 of
11 the Act found at page 160.

12 MR. GUTHRIE: I wonder if we could just
13 take a minute to read those sections beginning at 106.

14 MR. KOSKIE: I was going to read them.
15 I will read them now if it is convenient.

16 THE COMMISSIONER: I haven't got any
17 regulation 106.

18 MR. KOSKIE: It is Section 106 at page
19 160 of the Act.

20 THE COMMISSIONER: Oh, I see.

21 MR. KOSKIE: Perhaps it would be
22 convenient, Mr. Commissioner, to read this particular
23 regulation. If I may read Section 106, subsection (1):

24 "A constructor of a tunnel or
25 caisson in which persons work under
26 compressed air shall employ one or
27 more project physicians who shall
28 be reasonably available to render
29 competent medical services or advice
30 while any person is working in



1 compressed air (2) The project
2 physician shall visit the project
3 at least once every day on which
4 persons work in compressed air."

5 And then further on, Section 107 (1):

6 "No person shall work or be
7 permitted to work in compressed
8 air on a project before he has
9 been examined by the project
10 physician and the physician certi-
11 fies in writing to the superintendent
12 that the person is physically fit
13 for the purpose (2) The project
14 physician shall inform the person
15 of the precautionary measures that
16 he shall take in order to safeguard
17 himself from injury due to working
18 in compressed air."

19 And Section 108 reads:

20 "When a person is absent from
21 work in compressed air for ten or
22 more successive working days he
23 shall not resume work in compressed
24 air or be permitted to resume work
25 in compressed air until he has been
26 examined by the project physician
27 and is certified to be physically
28 fit for the purpose."

29 Now, I don't know whether the other sections are relevant
30 to what I may say. I do not intend to comment on the



1 other ones, but would be pleased to read them.

2 MR. GUTHRIE: The next two are of some
3 relevance.

4 THE COMMISSIONER: 110 is surely relevant.

5 MR. KOSKIE: I will read 109 then:

6 "A person who has not previously
7 worked in compressed air shall not be
8 permitted to work in compressed air
9 without first being tested under air
10 pressure by the project physician
11 and he shall not be permitted
12 work under any pressure of compressed
13 air for longer than one half a shift
14 unless he has been re-examined by
15 the project physician and found to
16 be physically fit for the purpose."

17 And Section 110:

18 "No person shall work or be
19 permitted to work in compressed air
20 unless he has had an examination by
21 the project physician within the
22 previous two months and has been
23 certified to be physically fit for
24 the purpose."

25 THE COMMISSIONER: I wonder why that is
26 there when 107 (1) is there? Don't they both say the
27 same thing?

28 MR. KOSKIE: They appear to, except that
29 I think 107 ~~and~~ I found this confusing myself, Mr.
30 Commissioner ~~and~~ I think 107 applies to a situation where



1 a person has not worked in a tunnel before. I can't
2 really understand it, I don't know. It does seem to
3 conflict. I thought I did have a theory for it, but I
4 can't recall it now.

5 THE COMMISSIONER: It is not unusual in
6 regulations to find them somewhat garbled.

7 MR. KOSKIE: And I think this is a
8 typical example. I thought perhaps 107 referred to the
9 situation if a person had not worked in a tunnel before
10 and Section 110 was otherwise, but it is still much
11 confusing.

12 THE COMMISSIONER: Now, perhaps we
13 go back to your brief.

14 MR. KOSKIE: Before I proceed further,
15 Mr. Commissioner, I have with me today three gentlemen
16 who are experienced in working under compressed air
17 conditions. Seated at my left, Mr. Commissioner, is
18 Mr. Norman Pike who is the Safety Inspector of the
19 Labourers' Union, Local 183, and he will try and
20 enlighten us on some of the medical aspects if he can,
21 of working under compressed air conditions. Seated next
22 to this gentleman, Mr. Commissioner, is Mr. John
23 McShane who is ^{on} compensation right now, but who was formerly
24 engaged by a construction company in Toronto on the Bloor
25 subway, and also engaged in working in the caisson in
26 the tunnel under compressed air conditions. The next
27 gentleman is Mr. Michael Lynch; I think you have met him
28 before, Mr. Commissioner, and he is also experienced in
29 working under compressed air conditions.

30 If I may read further before I ask these



gentlemen to comment on page 5 of the brief:

In a few instances. . . .

THE COMMISSIONER: You might read the last paragraph because I interrupted you.

MR. KOSKIE: Certainly.

The present practice of most employers using compressed air, under provisions 106 - 112 of the Regulation made under the Department of Labour Act, is to give each man a very brief medical examination before sending him into the tunnel, and to make out a minimal medical report under provision 111. In many instances, these examinations are very superficial, with as many as twenty men being examined by one doctor in the space of half an hour. In a few instances, the examinations are sometimes delayed until after the men have started working in the tunnel. In practically all cases, the medical information obtained from the cursory examination of each man is insufficient to determine whether he is medically fit to work in compressed air. Even more important, the present form of examination is insufficient to provide the Workmen's Compensation Board with adequate evidence to establish any sort of causal relationship between work in compressed air and the numerous diseases and disabilities suffered as a result of Caisson disease.

Now, perhaps I can stop at that point, Mr. Commissioner, and if you wish I do have some comments to make and these gentlemen do have some comments to make as well.

THE COMMISSIONER: I think you can make



1 some comments on that last paragraph because I think if
2 the doctor had certified that your man was capable of
3 going to work in the caisson pressure and later developed
4 trouble then you would have the benefit of that record
5 sheet before it started. I think you would be better off
6 than if he had maybe made some adverse finding, and then
7 he developed later trouble.

8 MR. KOSKIE: Well, perhaps that is so.

9 THE COMMISSIONER: And as for the
10 fellow an examination before would not throw much light
11 on those one way or the other.

12 MR. KOSKIE: It could, Mr. Commissioner;
13 that is the point we make. Because the examinations are
14 somewhat superficial and brief you really can't call them
15 a physical examination, and I say it for this reason:
16 Dr. Gamarra, as I have indicated before, who is presently
17 engaged in the research of this particular disease has
18 indicated to us that a proper examination of this sort
19 should take one and a half hours for each person.

20 Perhaps Mr. Pike can assist us on this account. He was a
21 foreman working for Robert McAlpine Company on the
22 University section of the subway and he can perhaps
23 indicate to us the extent of these physical examinations
24 which have taken place.

25 MR. PIKE: Yes, on the University Avenue
26 section of the subway it was the same, going by the
27 tunnel regulations, which require to examine people going
28 into compressed air. Now, this examination, the way it
29 was given there are about 30, sometimes 40 men, told by
30 the superintendent on a job to strip to the waist and they



1 line up in the shack on the job, the office, to get this
2 examination. One person goes into the doctor's office
3 and he is weighed, his weight is compared with the last
4 examination, his blood pressure is checked and a urine
5 test is given and then he is out and the next man comes
6 in. So the whole examination takes about three minutes.
7 They know absolutely nothing about what his heart
8 condition is, what his nervous condition might be, or if
9 he has any tuberculosis or any disease of that kind they
10 don't know.

11 Now, in Dr. Gamarra's examination that
12 he is giving I was examined myself by Dr. Gamarra because
13 of the fact that I had been working ⁱⁿ compressed air for
14 some time and his examination took exactly one hour and
15 fifteen minutes. He started X-raying all the joints of
16 the body starting from the ankle joints and going right
17 up to X-rays of the head and e.e.g. tests, which is
18 testing to see if there is anything growing inside the
19 head, which if you go into compressed air could cause
20 some brain condition or something. Then, of course, Dr.
21 Gamarra's examination did include chest X-rays, did
22 include e.e.g. tests and a cardiograph of the heart.
23 These are things we feel should be done to be sure he is
24 absolutely physically perfect before he goes into the
25 compressed air. Certainly he should have all these tests
26 and examinations.

27 THE COMMISSIONER: As a practical
28 matter if it takes an hour and a quarter and you have
29 got 30 men there all ready to go down to work how are you
30 going to handle that?



1 MR. PIKE: Well, according to

2 THE COMMISSIONER: That would be over
3 30 hours if he even was to be given a full examination.

4 MR. PIKE: That is quite true.
5 According to the Tunnel Regulations-----

6 MR. KOSKIE: Excuse me, I think he is
7 referring to the Department of Labour Act. I don't want
8 to confuse you.

9 MR. PIKE: So that if the doctor was
10 employed full time by the employer and doing his
11 examinations daily he would be able to give a person a
12 complete examination before going into compressed air,
13 but as it is now the Act says that the doctor should be
14 available on the job full time. The doctor is not on the
15 job full time and he is not giving these thorough
16 examinations, and it says here he is supposed to visit
17 the job at least once a day. The job is visited by
18 the doctor once a week, sometimes it is two weeks before
19 the doctor is seen on the job, so that in the space of a
20 week there is no problem in getting 20 or 30 people
21 examined with a full examination.

22 MR. KOSKIE: You are talking about your
23 experience, Mr. Pike. Has it been your experience that
24 doctors do not attend on the project every day?

25 MR. PIKE: They certainly do not, no.
26 I was engaged as foreman myself, and in one particular
27 case where we had a problem on the job with a fellow who
28 had a case of the bends I was the foreman on the shift
29 at that time and I was approached by a safety supervisor
30 on the job and his comment to me was, "I wish to hell I



1 could get ahold of Dr. Middleton, I can't find him
2 anywhere, I don't know how to get in touch with him."
3 In the meantime this fellow was in the medical lock with
4 a case of the bends.

5 MR. KOSKIE: Which project was that,
6 Mr. Pike?

7 MR. PIKE: This was on the Lansdowne
8 and Bloor section.

9 MR. KOSKIE: Of the subway?

10 MR. PIKE: Of the subway.

11 MR. KOSKIE: I may point out, Mr.
12 Commissioner, that while the Labourers' Union appreciates
13 that an examination as suggested by Dr. Gamarra may take
14 up to one and a half hours for each person I think that
15 that is a small price to pay for the life of one
16 particular person. The Labourers' Union is always
17 prepared, as I am sure any other trade union would be,
18 to cooperate with the employer in arranging for these
19 examinations in such a manner that the job would not be
20 unnecessarily interrupted, but I am sure the employer as
21 well as the trade unions are concerned with the saving of
22 lives and that is why they are always prepared to
23 cooperate in this regard.

24 Our suggestion is that an examination of
25 this nature, because we suggest it should be a detailed
26 examination, should be one that should be carried on or
27 sponsored by the Workmen's Compensation Board and in fact
28 the Labourers' Union suggest that a doctor from the
29 Workmen's Compensation Board be responsible for these
30 examinations.



1 Now, we say this, Mr. Commissioner,
2 because later in our submission we have recommended that
3 the whole problem of accident prevention come under the
4 jurisdiction and control of the Workmen's Compensation
5 Board and we try to relate that to the question of caisson
6 disease, for example, because if the medical examinations
7 are carried out in a similar manner as we have suggested
8 today then this would have the effect of reducing claims
9 with respect to injuries or diseases suffered by persons
10 working in compressed air conditions.

11 We understand --- and perhaps the
12 gentlemen from the Board could confirm this --- that in
13 the northern towns of Ontario in the mining areas that
14 the Workmen's Compensation Board does have its own
15 doctor there examine persons who work in the mines and
16 they certify their health and if this be correct, this
17 is all the more reason why, we suggest, the same approach
18 be adopted in caisson disease which is just as serious
19 as any disease that may be contracted by any employee
20 working in a mine. That is why we say the Workmen's
21 Compensation Board should be responsible for this and at
22 the same time they will have all the information in front
23 of them with respect to the health of each person they
24 have examined, in case a claim is made at some
25 subsequent time, and they could relate it up to the
26 earlier information.

27 We also suggest that these examinations
28 be held every two weeks and the reason why we have
29 suggested that, Mr. Commissioner, is that at present ---
30 I think Mr. Pike can confirm this --- the examinations



1 take place once every two months.

2 MR. PIKE: Every two months now.

3 MR. KOSKIE: I am not sure whether in
4 examining these persons every two months they are doing
5 so under any regulation ---

6 THE COMMISSIONER: I rather gathered
7 from what you have said previously that 30 men were told
8 to get ready for an examination and were examined at the
9 time on the project.

10 MR. KOSKIE: That is right.

11 THE COMMISSIONER: You say that only
12 occurs once every two weeks?

13 MR. KOSKIE: Every two months.

14 MR. PIKE: The way that they work it on
15 mostly all tunnel jobs, this is not just subway, of
16 course, compressed air carries through storm and trunk
17 sewers, sanitary sewers, and so on, so that there are
18 two or three shifts involved on a particular job so that
19 they take one shift in, there are 30 men in one shift,
20 and they take them in one month, and then they take 30
21 men in two months from then and give them their tests
22 over again so that each shift is going through one
23 examination every two months.

24 THE COMMISSIONER: And that is all they
25 get?

26 MR. PIKE: That is all they get.

27 MR. KOSKIE: Commenting further, Mr.
28 Commissioner, the reason why the labourers have suggested
29 the two-week period is mainly because of certain
30



1 recommendations which Dr. Gamarra has made to our clients
2 and was prepared to make to this Commission and will make
3 I understand, at some subsequent time, but he felt that
4 within the two-month period because these people are
5 working in compressed air conditions it would be very
6 easy for them to contract caisson disease during this
7 interim time, and it is therefore of the utmost necessity
8 that they be examined at shorter intervals so that they
9 can in effect nip the disease in its bud and perhaps this
10 would reduce the amount or the number of claims which are
11 made and would also reduce the funds which are paid out
12 in respect of any claims which are made.

13 MR. PIKE: I might comment a little
14 further on that. Quite often it happens, as a matter of
15 fact it has happened to me, and I am sure it has happened
16 to a lot of other fellows who have worked in compressed
17 air, where very often you get pains in your shoulder or
18 in your joints, like in your knee joints or it could be
19 your hip joints. Very often we get that and it is
20 considered as a minor thing. Sometimes we might go in
21 the medical lock for fifteen or twenty minutes and
22 it is gone, the pain is gone, and it probably doesn't
23 come back again. Maybe it will and maybe it won't. That
24 might be a week after you had had your last medical and
25 so you have got to wait for a month and a half at least
26 or more before you can get a medical again, and this fact
27 that you have this pain which is not put on record again,
28 that you had this mild case of the bends, that you should
29 have a medical immediately after you have this and have
30 to go through the medical lock before returning back to



1 the compressed air. You don't have to now: You go into
2 the medical lock and as soon as you feel fit you are put
3 back into the tunnel without having a medical.

4 THE COMMISSIONER: When you have a pain
5 in your knee ---

6 MR. PIKE: It is more like a cramp.

7 THE COMMISSIONER: You say that you then
8 go into a medical lock, is that what you said?

9 MR. PIKE: Yes.

10 THE COMMISSIONER: Because that is
11 recognized as sort of a minor degree of the bends, is it?

12 MR. PIKE: Yes. A medical lock, of
13 course, is known as a decompression chamber.

14 THE COMMISSIONER: Yes. But you would
15 have been going into the decompression chamber anyway, or
16 do you go into it again because of this pain in your
17 knee?

18 MR. PIKE: You go into it because you get
19 a pain. It is a pain something like rheumatism or
20 something of that kind, but you try to get rid of it by
21 going into the medical lock and you do. If it is caused
22 by compressed air, 15 or 20 minutes in the decompression
23 chamber the pain is gone.

24 THE COMMISSIONER: Part of that time you
25 had come through a decompression chamber, I take it?
26 How long after the time that you were working under
27 compression did you get this pain, or was it when you
28 were working under compression?

29 MR. PIKE: You usually get this when you
30 are being decompressed out of the tunnel so that when you



1 are being decompressed out of the tunnel you get this pain
2 as you are coming out of the lock and immediately after
3 you come out of the lock you go up to the top and you go
4 into the decompression chamber or medical lock.

5 THE COMMISSIONER: Into another
6 decompression chamber?

7 MR. PIKE: Into another decompression
8 chamber of a different type.

9 MR. KOSKIE: If I may continue, then, Mr.
10 Commissioner, on page 6:

11 There are several known cases in Ontario
12 of serious permanent disability from Caisson disease
13 where no compensation was awarded by the Board. In one
14 case in particular, a man who had worked in compressed
15 air of forty-two and a half pounds pressure died several
16 months later of general heart deterioration, and received
17 no compensation because of the lack of evidence showing
18 the causal relationship, and because the initial
19 examination failed to disclose whether there was any pre-
20 existing heart condition. It is therefore submitted, that
21 due to the latent and unknown effects of Caisson disease,
22 each man, before being sent into compressed air, should
23 receive a complete and thorough examination of every part
24 of his body, and that detailed records of this examination
25 be retained for use by the Board in any subsequent claims
26 for compensation. Further, it is submitted that each man
27 working in compressed air should be medically examined in
28 similar fashion every two weeks during or subsequent to
29 such work, and that these records also be retained.

30 If I just may pause at that point, Mr.



1 Commissioner, unfortunately Mr. Gallagher of the Labourers'
2 Union was unable to attend the hearings this week at all,
3 but will be back with us next week. He did have some
4 evidence to give in connection with the one particular
5 person who died as a result of a heart attack and who did
6 not obtain compensation because the causal connection
7 could not be shown with respect to the caisson disease.
8 We had also hoped that Dr. Gamarra would be with us today
9 at which time he would be prepared to elaborate on some
10 of these statements. Unfortunately, he can't, and it is
11 for that reason that we are unable to produce further
12 evidence in connection with some of these statements.

13 I should say this, that in the case of
14 the person who died as a result of the heart condition Dr.
15 Gamarra, as I understand it, (I have been so instructed
16 in any event) did examine this person before he died and
17 after he died and I believe that it was his opinion that
18 this person died as a result of a heart attack, but the
19 heart condition was caused because of his working in
20 compressed air conditions.

21 MR. GUTHRIE: Was that opinion submitted
22 to the Board?

23 MR. KOSKIE: I don't know. That is why I
24 say Mr. Gallagher is not here, and he will be able to
25 assist us on that. He will be here next week at which
26 time I will ask him, provided the Commission agrees, to
27 elaborate on that particular point, if he may.

28 MR. GUTHRIE: Have you got a claim number
29 on that one?

30 MR. KOSKIE: I am sorry, I have no other



1 information on that, Mr. Guthrie, and we will attempt to
2 give information on that next week.

3 I will continue on page 7:

4 Valuable research on Caisson disease
5 is presently being conducted by Dr. Gamarra under the
6 sponsorship of The Workmen's Compensation Board.

7 I understand, Mr. Commissioner, that the
8 Workmen's Compensation Board a few months ago discontinued
9 it sponsorship of this particular research.

10 This study was partially sponsored in
11 its formative stages by Local 183 of the Labourers'
12 Union, approximately one year ago. Dr. Gamarra's report
13 will be completed in the very near future, hopefully
14 this month --- at the time I wrote this this was in
15 September, and the report is not out yet --- and we would
16 recommend that it be carefully considered by this
17 Commission as an authoritative and enlightening document
18 on this relatively unknown disease, in light of our
19 recommendations as to improved and more detailed medical
20 examination of men working in compressed air.

21 If I may point out, Mr. Commissioner,
22 I myself spoke to Dr. Gamarra as late as last night and
23 the doctor informed me that his report is still not
24 prepared and he does have recommendations which he feels
25 will be of some assistance to you and we are hopeful that
26 these recommendations will be in writing very shortly
27 and will be presented to you before you submit your
28 report.

29 THE COMMISSIONER: I will be pleased to
30 have them.



1 MR. KOSKIE: In conjunction with Caisson
2 disease, we might briefly mention the matter of decompression
3 chambers, also known as "Medical Locks". Men working
4 in compressed air, upon emergence from the underground
5 excavation, should have a decompression chamber
6 available for their use, or they might suffer what is
7 known as "the bends". Although the regulation under the
8 Department of Labour Act requires them, these chambers
9 are not always available, and in some cases where they
10 have been available, have not been hooked up for
11 immediate use.

12 THE COMMISSIONER: I thought you always
13 had to go through one coming out. I mean you can come
14 through the decompression chamber without going through
15 a lock.

16 MR. PIKE: No, Mr. Commissioner, the
17 decompression chamber when you are being decompressed out
18 of the tunnel is a decompression chamber that has an in-
19 going and outgoing flow of air, but the decompression
20 chamber that is known better as the "medical lock" has a
21 system that will put pressure in to take pressure off
22 your body that has formed in your joints.

23 MR. KOSKIE: In other words, Mr.
24 Commissioner, if I understand it, I believe that when the
25 men are emerging from the tunnel they are being
26 decompressed from the tunnel and this process will not
27 assist them in any way medically. If they do require or
28 feel that they have cramps which they may or may not know
29 is the result of working in the compressed air, they will
30 then proceed to go into the medical lock which is based



1 on a different system; in other words, there is not an
2 inflow and outflow of air, there is just an inflow of
3 air which ---

4 MR. PIKE: ---stays at the level that
5 the body stays at and gradually decompresses; in other
6 words, the air is in and is sealed in so there is no way
7 of it coming out.

8 MR. KOSKIE: If I may read the last
9 sentence:

10 Although the regulation under the
11 Department of Labour Act requires them, these chambers
12 are not always available, and in some cases where they
13 have been available, have not been hooked up for
14 immediate use. Often employers and public officials, such
15 as police or firemen, have demonstrated a total ignorance
16 of the need for or use of decompression chambers.

17 THE COMMISSIONER: Where is the
18 regulation you refer to there, do you know?

19 MR. GUTHRIE: I think it begins at 112
20 and 113 and following.

21 MR. KOSKIE: Yes, Section 113 and 114
22 and 115, 116, right up to 119 deals with the matter of
23 medical locks. As the Commissioner will notice in
24 Section 113 of the regulation it reads:

25 "The construction (namely the
26 contractor or employer) shall supply
27 at least one medical lock and main=
28 tain it ready for operation at a
29 project at which work is performed
30



1 in compressed air".

2 If I may stop at that point, there is one outstanding
3 situation of this, Mr. Commissioner, and that is in
4 connection with Mr. John McGeehan and perhaps Mr. Pike
5 can elaborate on that instance.

6 MR. PIKE: In this case of Mr. John
7 McGeehan he received the bends while working with the
8 McNamara Construction in Toronto approximately a year ago.

9 In this case the police actually did not know where to
10 take him. They called up the airport to see if they had
11 a decompression chamber out there and they didn't have
12 one. There was one on the job, but it was not hooked up
13 and ready for use then and there was nobody on the job who
14 knew how to hook it up. There was nobody there at all
15 who knew anything about it. I am sure a lot of us here
16 are aware of what happened. He was flown to Buffalo and
17 it took them two and a half to three hours before they
18 got him into a decompression chamber in Buffalo for
19 which he suffered and is still suffering as a result of
20 it.

21 MR. KOSKIE: Our point is ~~this~~, Mr.
22 Commissioner, we feel that because this does have a
23 bearing on Workmen's Compensation claims that a matter of
24 this nature should also come under the Board's jurisdic-
25 tion because it does, in effect, deal with accident
26 prevention, and the result is, of course, to reduce the
27 number of claims or when claims are made to reduce the
28 amounts that are paid out in respect of such claims.

29 THE COMMISSIONER: When someone comes up
30 and then has some trouble like a pain in the knee which



1 he would otherwise correct by going into this medical
2 lock if that facility is not available apart from the
3 pain is there any --- does he suffer any injury? Is there
4 any permanent injury that would develop through failure
5 to get rapid treatment?

6 MR. PIKE: It could be very serious.
7 It could mean that a person with a serious case of the
8 bends --- I was referring to a minor case of the so-called
9 bends in the knee joint and so on --- but a person with
10 a serious case of the bends it could mean that within an
11 hour from receiving the bends he would be dead if the
12 chamber is not there to put him in immediately. It is
13 that serious.

14 I might also add, I have not got the
15 statistics for this at all, but there were one or two
16 fellows in the Coxwell Avenue tunnel died in the lock.

17 THE COMMISSIONER: At the moment this is
18 not under the Workmen's Compensation Board, but the
19 regulations are there and your union appears to be pretty
20 active. What do you do about it?

21 MR. PIKE: Of course, we try to put all
22 the pressure on the companies and the contractors
23 involved that we can.

24 THE COMMISSIONER: Are there no
25 inspectors under this Act?

26 MR. PIKE: They have Department of Labour
27 inspectors and, of course, I am not trying to criticize
28 the Department of Labour inspectors for not enforcing it,
29 but it has not been enforced by the fact that the medical
30 locks are not on all projects with compressed air on them



1 and the Department of Labour inspectors are not penalizing
2 the contractors for violating the Act.

3 THE COMMISSIONER: What penalties can be
4 imposed? Are there penalties under the Act for violations?

5 MR. PIKE: There is a penalty up to a
6 maximum of \$500.

7 THE COMMISSIONER: I see.

8 MR. KOSKIE: I think the Commissioner
9 can appreciate though that notwithstanding the fact that
10 at present there are regulations under the Department of
11 Labour Act it is in line with our submissions that
12 accident prevention come within the Board's jurisdiction
13 and that this also come within the Board's jurisdiction.
14 One of the difficulties has been and we will mention
15 this in greater detail next week, that we have in
16 existence now at least three or four bodies which are
17 saddled with the responsibility of issuing stop work
18 orders and responsibility, et cetera, and because there
19 are many of such bodies, for example, in the province of
20 Ontario, who could have jurisdiction over a particular
21 project we find there is much conflict between them. As
22 a result of this conflict the jobs continue in the same
23 manner in which they have been, namely, unsafe conditions.

24 THE COMMISSIONER: What other departments
25 than the Department of Labour has jurisdiction to issue
26 a stop work order?

27 MR. PIKE: There is nobody, Mr.
28 Commissioner, but the Department of Labour in this one
29 here. In tunnel regulations there is no one but the
30 Department of Labour enforcing the regulations. The



1 municipal inspector or any other inspector of the
2 government or anything else are not in the tunnel. It
3 is strictly the Department of Labour.

4 MR. KOSKIE: Except I think municipali-
5 ties can issue a stop work order.

6 MR. PIKE: Not on the tunnel.

7 MR. KOSKIE: That is, as I say, actually
8 there is not an overlap, but the fact is the municipality
9 is limited and the Department of Labour and they each
10 have their own responsibility and by the time anyone
11 gets there it may be too late. That is why we say there
12 should be a more centralized accident prevention
13 authority.

14 If I may continue on page 7.

15 For example, on one occasion, a workman
16 suffering from "the bends" in a public place was treated
17 as a common drunk, and placed in jail rather than taken
18 immediately to such a chamber.

19 And I think Mr. Pike can tell us
20 something about that particular situation.

21 MR. PIKE: Well, I can use one case in
22 particulr. The reason I pick this one is because it was
23 the project manager of the McAlpine Construction job on the
24 University Avenue job back in 1961. He was arrested and
25 taken into jail charged with being drunk and he was
26 suffering from the bends. I think perhaps some of the
27 rest of them can elaborate a little more on this, but it
28 was some time before they discovered that he had the
29 bends.

30 THE COMMISSIONER: Did he know he had the



1 bends?

2 MR. PIKE: Once you get the bends, Mr.
3 Commissioner, and you get them bad you can't talk.

4 THE COMMISSIONER: He couldn't talk?

5 MR. PIKE: No. When you are examined
6 before you go into the tunnel you are given a badge to
7 wear around your neck saying "I am a compressed air
8 worker. In case of the bends, please take me to such
9 and such a place". In this case, of course, quite often
10 when the police pick you up they don't take off your
11 shirt and look at the inside of your body. Therefore,
12 they would not know whether you had the bends or not and
13 the person is unable to talk to tell them what the
14 trouble is.

15 MR. GUTHRIE: Where was this man found,
16 Mr. Pike.

17 MR. PIKE: He was found in his car at
18 Bloor and Ossington.

19 MR. GUTHRIE: He had been driving, had he?

20 MR. PIKE: He had not been driving at
21 the time. His car was stopped. I guess from the position
22 his car was stopped in the police pulled him in to question
23 him and find out what was the trouble. In doing so they
24 found that he was unconscious in the car and thought he
25 was stone drunk.

26 MR. GUTHRIE: I just wonder if there
27 were any other symptoms to suggest that he
28 been drunk. It seems odd that they would treat him as
29 such simply because he was non compos. Was there any
30 evidence of alcohol?



1 MR. PIKE: No, this is the thing. There was
2 no evidence of alcohol and then he was taken to the
3 decompression chamber and he was given relief from the
4 bends.

5 MR. KOSKIE: How long did it take before
6 he was taken to the decompression chamber, Mr. Pike?

7 MR. PIKE: I understand it took three
8 or four hours before he was taken to the decompression
9 chamber.

10 MR. LYNCH: I do believe that he had
11 quite a time in convincing the police that he was sick.
12 It was not a severe case of the bends, but it seems that
13 one symptom of the bends is that you are dizzy and you
14 feel drunk. It depends on what part of your body you get
15 the bends, but he did have quite a time in persuading the
16 police that he was sick and when he produced his badge
17 they did take him to University and Dundas where he was
18 placed in a decompression chamber.

19 MR. KOSKIE: If I may continue, then,
20 Mr. Commissioner, on page 8:

21 In this regard we would make two
22 recommendations:

23 (i) That the Workmen's Compensation
24 Board make available to all employers using compressed air
25 and to all public officials such as police and firemen,
26 information concerning the general diagnosis and treatment
27 of "the bends" and concerning the use of decompression
28 chambers.

29 (ii) That the inspection system for
30 decompression chambers be revised to ensure absolute



1 compliance with the regulation under the Department of
2 Labour Act.

3 Now, I appreciate, Mr. Commissioner, that
4 your jurisdiction here perhaps would not extend to any-
5 thing under the Department of Labour Act and it is for
6 this reason that I repeat again that we feel that this
7 should be brought under the Board's jurisdiction.

8 I have no further comments to make in
9 respect of caisson disease unless the Commissioner or Mr.
10 Guthrie have any questions.

11 MR. GUTHRIE: Well, I have one or two,
12 Mr. Commissioner.

13 Do I understand you, Mr. Koskie, that
14 the purpose or the whole idea of your emphasis on the
15 medical examination would be somewhat like that of the
16 miner's chest X-ray, in those cases where tuberculosis
17 is disclosed by that examination a man is simply not
18 allowed to work further in a mine: Is that what you are
19 seeking here, that he be barred from this employment?

20 MR. KOSKIE: That is right. We are not
21 concerned about a workman being barred from work if it
22 will mean that his life will be saved.

23 MR. GUTHRIE: In a number of the
24 instances that you cite in the brief --- I am thinking on
25 page 5, for example, of the examination taking place
26 after the men have started working and I think it was
27 mentioned that in some cases these physicians visit the
28 job only once or twice a week instead of daily and on
29 page 7 you mention that in some cases the medical locks
30 are simply not available. Those are all matters of an



1 offence against the regulations really: It is not the way
2 the regulation is framed that is raising a problem here,
3 is it --- it is simply enforcement?

4 MR. PIKE: I would say yes, it is simply
5 enforcement.

6 MR. GUTHRIE: These are problems for the
7 authorities, though, are they not?

8 MR. PIKE: That is right.

9 MR. KOSKIE: While we appreciate they
10 are problems for the authorities we still feel in our
11 general submission that this should now be a problem of
12 the Workmen's Compensation Board because they are
13 concerned with accident prevention, they are concerned
14 with reduction of accidents, and where accidents are
15 incurred they are concerned with ensuring that the person
16 receives prompt medical treatment to, of course, reduce
17 the amount of money that will be paid out in connection
18 with those claims. That is why we feel this should come
19 under the Board's jurisdiction.

20 THE COMMISSIONER: Of course, this is not
21 the only place, I mean to say, that there is divided
22 jurisdiction. That stretches throughout the whole picture.
23 The Department of Labour looks after one thing, the
24 Department of Health another and then the Workmen's
25 Compensation Board at the moment appears to be restricted
26 to educational work alone which in itself is very
27 extensive. It is one of the things that has to be
28 considered here, what measures can be taken to try and stop
29 overlapping in some cases and in the second place allow
30 for better enforcement of such regulations as these and



1 when I get into that I wonder how wide my authority is
2 over these things. This is very interesting.

3 MR. KOSKIE: We appreciate the practical
4 result of what we say here today would mean that we would
5 have to build a bigger Workmen's Compensation Board
6 building to house all these various departments, but
7 --- and I don't say that sarcastically, of course, but I
8 submit that the Workmen's Compensation Board does employ
9 its own doctors. It is always concerned with medical
10 problems and this is a medical problem, and it certainly
11 relates to a disease. It would appear to me that one of
12 the prime functions of the Workmen's Compensation Board
13 would be to ensure that claims are kept at a minimum and
14 if this is one way they can do it, then I feel it should
15 come in under their jurisdiction even if it means taking
16 away a certain proportion of the jurisdiction from the
17 Department of Labour and giving it to the Workmen's
18 Compensation Board, and I am sure the Department of
19 Labour are busy enough without this particular matter on
20 its hands. I think we need a centralized authority for
21 this because it would enable the Board to work much more
22 expeditiously. I do appreciate the practical effects,
23 but on the other hand, I don't think that would rule out
24 the widening of the Board's powers.

25 THE COMMISSIONER: Why would you not
26 take it away from them altogether and put them all
27 together?

28 MR. KOSKIE: That might be an alternative.
29 We have not thought of it from that point of view. We
30 have only thought of it from the point of view of



1 enlarging the Board's powers and supervisory duties, et
2 cetera.

3 MR. GUTHRIE: Mr. Koskie, leaving aside
4 the question of who is to enforce them for the minute the
5 principal change that you would want to see in these
6 regulations whoever is enforcing them is this two-week
7 medical substitute for the two-month, is that right?

8 MR. KOSKIE: Two-week medical, and not
9 only that, but we also feel that the medical examination
10 itself or perhaps the regulations in some manner can
11 describe the method of examination or how the examination
12 should take place. In other words, the examination that
13 Mr. Pike speaks about, the one that lasted three minutes,
14 cannot obviously be sufficient under the circumstances
15 and while we do appreciate the length of time involved,
16 we are sure that this can be worked out to the advantage
17 of both sides.

18 MR. GUTHRIE: Just to be clear on the
19 question of the availability of a chamber here I take it
20 the Buffalo incident was some years ago, was it, because
21 I have a news bulletin here of the Board, as it happens,
22 that is dated November, 1964, showing that around-the-
23 clock emergency treatment for divers and tunnel workers
24 suffering from what is commonly called the bends is
25 available at Toronto General Hospital where a large
26 decompression chamber has been installed. So that has
27 answered that problem.

28 MR. PIKE: Yes. It was --- what did I
29 say, a year and a half ago?

30 MR. GUTHRIE: I missed that. That was the



1 point of my question.

2 MR. KOSKIE: That bulletin that you have
3 there and the fact that the decompression chamber was
4 made available at the Toronto General Hospital as I
5 understand it was as a result of the John McGeehan case,
6 and I believe that Mr. Gallagher on behalf of the
7 Labourers' Union was one of the leading forces in
8 ensuring or arranging for this decompression chamber to
9 be available at the hospital.

10 MR. GUTHRIE: However it came about the
11 point we are concerned about today is that we have got
12 one there.

13 MR. PIKE: We have one there, yes.

14 MR. GUTHRIE: I wonder, Mr. Koskie, if
15 members of the union are familiar with a bulletin which
16 I believe was put out by the Board. It is called "What
17 to do for Caisson Disease". I noticed in the last part
18 of your recommendation there is something about the need
19 for some explanatory material. Is that in circulation
20 among your members?

21 MR. PIKE: I have never seen this
22 before.

23 MR. KOSKIE: Neither have I. It has
24 never been shown to me prior to this occasion.

25 MR. GUTHRIE: Well, some of the tunnels.

26 MR. PIKE: I go through all the tunnels
27 and I have not seen one of them in all my travelling
28 throughout tunnels throughout the Province of Ontario.

29 MR. GUTHRIE: So far as you know that is
30 not available to your membership?



Nethercut & Young
Toronto, Ontario

1911

1 MR. PIKE: No, it certainly is not.

2 MR. KOSKIE: We are not saying it isn't
3 available: It has not been distributed to them.

4 MR. GUTHRIE: Perhaps the Board could
5 help us on that at a later time.

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

29

30



1 Perhaps Mr. Kerr can help us on that.

2 THE COMMISSIONER: What does Mr. Kerr
3 say about it? Can you give us some assistance on that,
4 Mr. Kerr?

5 MR. KERR: The distribution of this
6 brochure comes under our Public Information, Public
7 Relations Division of the Board, and it was distributed
8 to all construction companies that had connection with
9 caisson work, to the Harbour Commission, to the Police
10 Department, to the Fire Department and the Department of
11 Labour Inspection Branch, Construction Safety Association,
12 and the Ontario Underground Water Club, which is the
13 skuba diver group.

14 THE COMMISSIONER: You had better add
15 the International Labourers' Union.

16 MR. KERR: We will do that, sir

17 MR. GUTHRIE: What is the general wage
18 level of these tunnelers?

19 MR. PIKE: The wage level is \$2.84 an
20 hour for miners and \$3.37 for lead miners. There is an
21 additional \$5.00 per shift. The \$5.00 would be for over
22 fifteen pounds of compressed air. It would go up as air
23 pressure rises in the tunnel. It could go up to \$16.00
24 a shift.

25 MR. GUTHRIE: That is danger pay?

26 MR. PIKE: Yes.

27 MR. GUTHRIE: \$5.00 a shift for how many
28 pounds?

29 MR. PIKE: This would be over fifteen
30 pounds.



1 MR. GUTHRIE: You are dealing with subway
2 workers in Toronto who are earning these rates?

3 MR. PIKE: Yes. In other parts they are
4 not getting that much.

5 MR. GUTHRIE: And the pressure in the
6 Toronto tunnels has been up to 48 pounds?

7 MR. PIKE: Yes. That was on Coxwell
8 Avenue.

9 MR. GUTHRIE: Would the sewer rates be
10 different?

11 MR. PIKE: The rates for storm sewers
12 would be much lower. If it was \$5.00 for 15 pounds
13 pressure on a subway tunnel, it would be only \$1.50 on
14 a sewer tunnel. The air pressure is the same, the danger
15 is as great, but the sewer contractors have different
16 agreements than the subway agreements.

17 MR. KOSKIE: If I may continue briefly
18 to deal with two other diseases on page 8 of our brief,
19 paragraph No. 2, headed:

20 (2) Other Diseases

21 It is our submission that ARTHRITIS and
22 RHEUMATISM be recognized by the Board as industrial
23 diseases and included in Schedule 3, for every workman
24 engaged in any process involving continued exposure to
25 wetness, drafts, cold weather, wide variations in
26 temperature, and repetitive stress.

27 Further, it is submitted that Schedule 3
28 should be periodically updated to add new industrial
29 diseases as compensable disablements, as such diseases
30 become known and recognized in industry. We would



1 specifically recommend the abolition of the residence
2 restriction in Section 116 (8) of the Act, as this
3 restriction inflicts undue hardship on those workers from
4 outside the Province and thus tends to impose restraints
5 on the general mobility of the labour force. I have no
6 further submissions to make on the question of medical
7 treatment at this stage, Mr. Commissioner, unless there
8 are any further questions.

9 MR. GUTHRIE: Mr. Koskie, do you point to
10 any medical studies which would assist us on this
11 arthritis and rheumatism situation? Are you aware that
12 any studies have been done to show that these matters
13 had led to industrial disease in Ontario?

14 MR. PIKE: I think that Dr. Gamarra's
15 examination would show this. I think he has examined
16 roughly 500 cases of people who have worked in compressed
17 air, and I am sure he has statistics on that, rheumatism,
18 and that kind of thing, that would be related to
19 compressed air.

20 MR. KOSKIE: I thought we could have
21 that information from Dr. Gamarra today, but we hope it
22 will be included later.

23 THE COMMISSIONER: Thank you.

24 MR. KOSKIE: Thank you very much, sir.

25 MR. GUTHRIE: Mr. Koskie, you have nothing
26 on pre-existing conditions?

27 MR. KOSKIE: I think we dealt with that.

28 MR. GUTHRIE: Page 13.

29 MR. KOSKIE: Yes, I think we dealt with
30 that.



1 MR. GUTHRIE: In any event, your
2 position is the same as that of the Mine, Mill Union on
3 that point, at pages 13 and 14?

4 MR. KOSKIE: Yes, I believe it is. That
5 is correct.

6 I understand, Mr. Commissioner, that we
7 are going to be dealing with job security. I know that
8 wasn't on the notice, but Mr. Johnston advises me you
9 do intend to deal with that this week.

10 THE COMMISSIONER: Well, the fact that
11 someone might, after he recovers from his disability, be
12 able to return to the job?

13 MR. KOSKIE: Yes.

14 THE COMMISSIONER: I don't know if Mr.
15 Johnston can tell you this specifically, but if you want
16 to do it next week, you can do it then, otherwise you
17 will have to come back. We will have some odds and ends
18 that have to be taken care of.

19 MR. KOSKIE: The Labourers' Union will
20 have representatives here at all times, and we will be
21 more than glad to assist on any points that have to be
22 discussed.

23 THE COMMISSIONER: Thank you.

24 MR. GUTHRIE: Mr. Commissioner, the
25 International Nickel Company is still notable to proceed
26 this afternoon, and although it may interrupt the usual
27 procedure somewhat, I think we might either read some of
28 the briefs which will not be presented in person into
29 the record or else call on Dr. Powell, who is available
30 with some further aspects of the Board's submission on



1 these points.

2 THE COMMISSIONER: Perhaps we had better
3 hear from Dr. Powell first. You want to read in
4 submissions in connection with the matter we are discussing
5 today?

6 MR. GUTHRIE: There are one or two. It
7 doesn't matter whether they are read today or tomorrow.
8 We will still be on this subject with Dr. Paterson
9 tomorrow.

10 DR. POWELL: While we have caisson
11 disease fresh in our minds, we might have it tabled.

12 Mr. Commissioner: CAISSON DISEASE

13
14 SCHEDULE III DISEASE

15 Subsection 8 of Section 116 of the Act
16 provides that, "If the workman at or immediately before
17 the date of the disablement was employed in any process
18 mentioned in the second column of Schedule 3 and the
19 disease contracted is the disease in the first column
20 of the Schedule set opposite to the description of the
21 process, the disease shall be deemed to have been due to
22 the nature of that employment unless the contrary is
23 proved, but, except where the Board is satisfied that the
24 disease is not due to any other cause than his employment
25 in Ontario, no compensation is payable under this
26 section unless the workman has been a resident of Ontario
27 for the three years next preceding his first disablement.

28 THE COMMISSIONER: I thought at first
29 you were reading from the top of Schedule 3. What
30



1 section were you reading?

2 DR. POWELL: 116, sir.

3 Caisson disease or compressed air illness
4 is covered by Section 116 of the Act and is included in
5 Schedule 3. Workmen engaged in any process carried on in
6 compressed air, such as diving and tunnelling, are
7 protected.

8 CLAIMS

9
10 The Board deals with claims for Caisson
11 disease in the same manner as for other scheduled
12 diseases. Diagnosis and exposure are established and
13 medical aid and compensation entitlement assessed.

14 Where evidence of conditions related
15 to Caisson disease, such as bone changes, does not appear
16 until some time after exposure, in some instances two,
17 three, four or five years, a claim will be considered
18 at the time it arises and the same criteria will apply.
19 In fact, no claim file is ever closed in the Workmen's
20 Compensation Board.

21 REGULATIONS

22
23 In 1963, the Department of Labour
24 completely modernized the regulations concerning all
25 aspects for safe employment in compressed air. These
26 regulations are administered by the Department of Labour.
27 A copy of these Regulations is appended. A copy of these
28 regulations has been distributed today.

29 PRESSURE CHAMBER

30 In August, 1964, the Workmen's



1 Compensation Board installed a large pressure chamber at
2 the Toronto General Hospital. Previously the nearest
3 permanent chamber was in Buffalo, New York, but now this
4 new chamber provides emergency treatment on a round the
5 clock basis for those suffering from Caisson disease.

6 Pamphlets describing the new chamber
7 and its use with details of the symptoms of Caisson
8 disease have been distributed by the Board and samples
9 are attached for consideration.

10 RESEARCH IN CAISSON DISEASE
11

12 Medical research in Caisson disease
13 has been going on during the past year as a part of the
14 Board's medical research program, and Dr. Gamarra has
15 promised to report to the Board just as soon as he has
16 completed his findings.

17 This research was completed at the end
18 of July of this year, and it is a matter of collecting
19 and collating all the material that is available to
20 present it in a proper scientific form, hence the reason
21 for the delay. It takes time to prepare the paper in
22 presentable form.

23 MR. GUTHRIE: I notice the three years
24 residence requirement is not an absolute thing, is it,
25 because if the Board can be satisfied that the disease
26 is due to no other cause than his employment in Ontario,
27 that wouldn't bar him? Is that right?

28 DR. POWELL: That is right. I might say
29 that Dr. Mastromateo of the Department of Health will be
30 here tomorrow to discuss any clinical aspects of caisson



1 disease and possibly in relation to clinical examination.

2 THE COMMISSIONER: There has been very
3 little said about these aspects. It is already included
4 in Schedule 3 and consequently anything that can be
5 attributed to it can be compensable. But it has been
6 suggested here that heart failure and things of that
7 kind are not really attributable to the source of the
8 trouble of this caisson disease, and in that case Dr.
9 Mastromateo can deal with it tomorrow.

10 DR. POWELL: Yes, sir. We can be
11 questioned on that now, or you may wish to leave it
12 until tomorrow.

13 THE COMMISSIONER: Have you any questions,
14 Mr. Guthrie?

15 MR. GUTHRIE: No.

16 DR. POWELL: I have another submission
17 today, Mr. Commissioner. I have brought with me Dr.
18 Terence Kavanaugh, who is Chief of Pensions for the
19 Board, and this is as to pre-existing conditions.

20 PRE-EXISTING CONDITIONS

21 INJURY BY ACCIDENT

22
23 Section 3 (1) of the Act provides
24 benefits for personal injury by accident arising out of
25 and in the course of employment. In most cases, the
26 injury sustained at the time of accident is the only
27 factor in the resulting disablement. In some cases, pre-
28 existing conditions which may or may not have been
29 evident prior to the accident affect the degree of
30 disablement and, therefore, the workman's entitlement.



1 PRE-EXISTING CONDITIONS

2
3 Pre-existing conditions may be divided
4 into two categories -- measurable and non-measurable
5 defects. Including in the first group would be obvious
6 defects such as impaired vision, amputations, joint
7 fusions, and skeletal deformities. The second group
8 comprises latent conditions brought to light by super-
9 imposed injury or precipitated by injury resulting in
10 disability out of proportion to the injury itself.
11 Examples of these are diabetes, arteriosclerosis, weakness
12 of large blood vessels, which is aneurism, allergic
13 manifestations, thin skulls, and degenerative disc
14 disease.

15 AGGRAVATION BY ACCIDENT

16
17 Where a pre-existing condition is
18 aggravated by accident to the extent that it becomes
19 disabling and the evidence confirms a causal relation-
20 ship between disability and accident, entitlement is
21 granted. In such cases, it is the Board's aim to return
22 the workman to his pre-accident state, wherever possible.

23 PERMANENT DISABILITY

24
25 Where permanent disability results
26 from the accident, the residual disability is considered
27 for an award. Where the pre-existing condition is a
28 measurable defect, such as an amputated finger, the
29 pension is generally based on the total value of the
30 entire disability, less the value of the pre-existing
defect.



1 I would like to ask, Mr. Commissioner,
2 that Dr. Kavanaugh might explain this by example.

3 THE COMMISSIONER: If he just had one
4 kidney, if he lost the other kidney you wouldn't deduct
5 the first?

6 DR. POWELL: No.

7 THE COMMISSIONER: The loss of an eye,
8 if one has already gone. My general impression on these
9 things --- it may be from what has been said from one of
10 my predecessors, is that each one of these cases must
11 depend on the particular facts, that there are cases
12 where ~~probably~~ the diabetic is one, where the man loses
13 his foot and he should be entitled to full compensation,
14 but there are many others where there should be a
15 substantial deduction by reason of his previous disability.

16 DR. POWELL: It is very difficult to
17 assess and measure. It may not be brought to light
18 except by a precipitating accident.

19 THE COMMISSIONER: A man with a heart
20 condition may be doing a lot of things which are a great
21 strain on his heart, and he may be doing a labouring job
22 which doesn't entail any strain at all.

23 DR. POWELL: SECOND INJURY FUND

24 The Second Injury Fund was created by
25 the Board effective September 15, 1944, and is provided
26 for by Section 102 (2) of the Act.

27 This fund was established to avoid the
28 employer being charged with an increased cost because of
29 the prior defect. The cost is the difference between
30 the disability resulting solely from the recent injury



1 and its increased value because of the prior defect.

2 Again I think by example Dr. Kavanaugh
3 could clarify this to your satisfaction.

4 THE COMMISSIONER: If it is to avoid the
5 employer being charged, where do the funds come from?

6 DR. POWELL: It is from the fund. Some of
7 these awards come out of the common fund and are not
8 assessed to any particular employer.

9 THE COMMISSIONER: Instead of it being
10 assessed to that particular class, it is an overall
11 assessment?

12 DR. POWELL: Yes, to industry as a whole.

13 Where the pre-existing condition was a
14 latent one and had no assessable value until aggravated
15 by the accident, the pension is based on the extent of
16 the permanent disability. Usually fifty per cent is
17 charged to the Second Injury Fund. This encourages
18 employers to hire disabled workers.

19 THE COMMISSIONER: I see your point.
20 I was wondering why you needed a master fund. If some-
21 thing happened, particularly if he is in the small class,
22 it could increase his assessment substantially if he
23 hired somebody who had been disabled.

24 DR. POWELL: Yes.

25 THE COMMISSIONER: Do you want Dr.
26 Kavanaugh to speak on that now?

27 DR. POWELL: If there was some elucidation
28 or clarification by example of this Second Injury Fund or
29 what is meant by enhancement, particularly due to injury.

30 MR. GUTHRIE: I think it would be helpful



1 to indicate the way it works in practice.

2 DR. KAVANAUGH: I think the simplest
3 is the problem, as Dr. Powell said, that you can measure.
4 If you have a man who has today lost his right index
5 finger, which is rated on our scale at 4 percent, and he
6 is hired and he loses his left index finger in a
7 compensable accident, so he has a 4 percent disability,
8 but he already had a 4 percent disability. We have a
9 generally accepted procedure here that we have an
10 enhancement factor with impaired organs, and what we do
11 is we take the value of each side and add half. In other
12 words, this finger would be 4 percent, this finger would
13 be 4 percent, and the two together would be 4 plus 4
14 plus an enhancement factor of 2. So now we have three
15 factors: We have the 4 for 1 finger which is not
16 compensable, the 4 for 1 finger which is compensable,
17 and we have the 2 which is an enhancement factor. So we
18 now give the man 6 percent, 4 percent of which is
19 charged to the employer and 2 percent of which is
20 charged to the Second Injury Fund.

21 THE COMMISSIONER: You then give the
22 man 6 percent?

23 DR. KAVANAUGH: Yes.

24 THE COMMISSIONER: I thought you would
25 give him 10 percent.

26 DR. KAVANAUGH: No, because he had this
27 injury before he went into the employment. So this is
28 how we handle this straightforward type of case. In a
29 pre-existing injury the employer can employ the man with-
30 out his index finger without fear of pension being



1 involved because of that.

2 MR. GUTHRIE: You charge 4 percent to the
3 employer and 2 percent to the Second Injury Fund?

4 DR. KAVANAUGH: Yes.

5 MR. GUTHRIE: Is that enhancement factor
6 used only in impaired organs?

7 DR. KAVANAUGH: Yes. We don't have it as
8 to the loss of a right hand or leg. For instance, this
9 finger is 4 percent, this finger is 4 percent, but the
10 two together would be more than 4 percent.

11 MR. GUTHRIE: The same with eyes

12 DR. KAVANAUGH: We have a formula for
13 this, but if a one-eyed man were to lose the sight of
14 his eye it would be 84 percent. He had already joined
15 the employ of the company with a 16 percent disability,
16 so it would be unfair to charge that to the employer.
17 The purpose of the Second Injury Fund is to see that the
18 man gets the enhancement factor but that the employer will
19 not be charged with the disability he had before
20 entering employment.

21 MR. GUTHRIE: Would you give me the
22 eye situation again?

23 DR. KAVANAUGH: He enters employment with
24 one eye, he has lost an eye, whether it be in industry
25 or during the war, and he might even have a pension for
26 this, and he receives 84 percent and the enhancement
27 factor is charged to the Second Injury Fund.

28 THE COMMISSIONER: The second eye is
29 the 84 percent?

30 DR. KAVANAUGH: It has come to 84 percent.



1 He already has 16 percent, so he receives 84 percent.

2 MR. GUTHRIE: What portion of that is
3 charged to the Second Injury Fund?

4 DR. KAVANAUGH: I think it is minus
5 16 percent. I don't have the figures with me now, but
6 this is charged on a formula.

7 MR. GUTHRIE: The exact amount doesn't
8 matter. That leads me to talk about the non-measurable,
9 diabetes, et cetera.

10 THE COMMISSIONER: Let's hear about
11 those.

12 DR. KAVANAUGH: The difficulty here is
13 we are dealing with conditions which can't be measured.
14 If a man has a coronary, he has a fair amount of cardiac-
15 vascular disease, and yet it seems to me we cannot
16 say in all honesty how much this attributed to the
17 coronary. When we take the individual cases we tend to
18 look at the circumstances under which the coronary
19 occurred, but, nevertheless, we can't say that 30 percent
20 or 40 percent or 50 percent pre-existed the accident. We
21 give him 50 percent and charge a portion of this to the
22 Second Injury Fund. As the Commissioner said earlier,
23 we don't feel bound, and when we get cases that look
24 obviously not to fit into this rule, then we feel we have
25 a liberty to digress slightly. In other words, if a man
26 has a very minor accident and has a history of cardiac
27 disease, then we would tend to charge a greater portion
28 to the Second Injury Fund. If we have a diabetic who
29 has a severe injury to his leg and after the report he
30 is found to be suffering from diabetes and he loses a



1 leg, mid-thigh, through gangrene, he would get the value
2 of the leg, mid-thigh, and half of this would be charged
3 to the Second Injury Fund. In other words, if he had
4 diabetes for many years and he developed a minor injury,
5 a scratch, and he went on to develop gangrene, we may
6 not give him so great a percentage.

7 THE COMMISSIONER: Ordinarily the
8 compensation would be what, in the case of the leg?

9 DR. KAVANAUGH: Ordinarily the compensation
10 would be 50 percent.

11 THE COMMISSIONER: For the loss of one
12 leg?

13 DR. KAVANAUGH: Yes, for the loss of a
14 leg through the thigh.

15 THE COMMISSIONER: 50 percent of earnings?

16 DR. KAVANAUGH: Yes.

17 THE COMMISSIONER: And you said half of
18 that would be charged to the Second Injury Fund. Is that
19 the Second Injury Fund?

20 DR. KAVANAUGH: If he was a diabetic,
21 half of that 50 percent would be charged to the Second
22 Injury Fund, half of his 50 percent.

23 MR. GUTHRIE: But in determining how
24 much you charged to the Second Injury Fund, that is where
25 you have regard to the seriousness of the incident?

26 DR. KAVANAUGH: Yes. 50 percent is an
27 arbitrary figure, but where there is evidence on one side
28 or the other we can adjust it.

29 MR. GUTHRIE: I am thinking back to the
30 illustration Mr. Justice Roach set out: The workman who



1 suffers from diabetes and who has a very minor injury to
2 the toe. This is the sort of thing you look at?

3 DR. KAVANAUGH: Yes.

4 MR. GUTHRIE: In that case the Board
5 said it would consider the loss of the foot due to a
6 diabetic condition as having been partly caused by the
7 diabetic condition, and it was 50 percent of the award
8 that would ordinarily be awarded for the loss of the
9 foot. Would the Board do any different today?

10 DR. KAVANAUGH: Yes, he would be awarded
11 the loss of the leg, but a portion of that would be
12 charged to the Second Injury Fund. If the leg was worth
13 50 percent mid-thigh, in those days he probably would get
14 25 percent pension, of which 12-1/2 percent would be
15 charged to the Second Injury Fund. Since 1944 we would
16 give him 50 percent and charge half to the Second Injury
17 Fund.

18 THE COMMISSIONER: When you say 50
19 percent, that is 100 percent assessment on the loss of
20 the leg?

21 DR. KAVANAUGH: Yes.

22 THE COMMISSIONER: And the case Mr.
23 Justice Roach referred to, that was 50 percent assessment
24 on the value of the leg?

25 DR. KAVANAUGH: Yes, again half of which
26 would be charged to the Second Injury Fund. Maybe an arm
27 is a better example. It is 70 percent for the loss of an
28 arm. Under the previous system he would have got 35
29 percent pension, half of the value of the arm, and half
30 of that would be charged to the second injury fund.



1 Now he would get 70 percent.

2 MR. GUTHRIE: This is revolutionary.
3 What led to that change in policy? There was no change
4 in the legislation.

5 DR. KAVANAUGH: A question of interpre-
6 tation, Mr. Guthrie. I can't be specific.

7 MR. GUTHRIE: This policy you are
8 telling us of now may have gone a very long way to solving
9 the problem without legislative change.

10 DR. KAVANAUGH: I think it has; I think
11 that is what has happened.

12 MR. GUTHRIE: Was it as a result of the
13 report, or what?

14 DR. KAVANAUGH: I couldn't say. That
15 report has been around a long time. It is at a level
16 higher than mine.

17 MR. GUTHRIE: When did you say it came
18 into being?

19 DR. KAVANAUGH: In 1944.

20 THE COMMISSIONER: This might account for
21 some of the escalation complained of by industry in the
22 assessments.

23 DR. KAVANAUGH: I don't know about that,
24 Mr. Commissioner, because we spent in 1964 on our Second
25 Injury Fund charges somewhere around ---

26 THE COMMISSIONER: I think, Doctor, we
27 will take a five-minute break and perhaps you can give us
28 that when we come back.

29 DR. KAVANAUGH: Yes, surely.

30 ---Short recess.



TN/SS 1

DR. KAVANAUGH: To give you some idea

2 of the amounts of money involved and this is the amount
3 of money which is transferred, it is a bookkeeping
4 procedure which is apparently done at the end of each
5 year, but our annual report last year, the Department's
6 annual report, these are the figures for 1965. The
7 amount transferred or charged from the Second Injury Fund
8 was \$405,328 and that represented 106 cases. In 1964
9 we made transfers in 80 cases and that amounted to
10 \$225,344. The amount is greater, yes, but I don't
11 personally feel that this represents an increase solely
12 due to a change in policy. Obviously the number of
13 cases where we charge it to the Second Injury Fund was
14 greater.

15 THE COMMISSIONER: What about 1963?

16 DR. KAVANAUGH: In 1963 we had 67 cases
17 amounting to \$176,632. Now, in 1962 we had 72 cases and
18 the amount was higher than 1963, it was \$260,462. So
19 you see it depends on the type of case you are getting,
20 the percentages involved and even on matters such as the
21 wage base if all the cases you are dealing with are
22 high wage bases which means more money even in pension
23 then you will be involved in a greater charge.

24 THE COMMISSIONER: Thank you.

25 MR. GUTHRIE: Dr. Kavanaugh, can you tell
26 us anything about the fire fighters? We heard about their
27 problems of heart disease. How do you approach those
28 cases? Have you any experience of a general nature you
29 can tell us?

30 DR. KAVANAUGH: Just impressions.



1 You see, as far as the Pension Department is concerned the
2 man has entitlement when the case comes to us. This has
3 been decided in the claims level and the Medical Depart-
4 ment level and we handle these just the same as we would
5 any other coronary. If he is 50 percent or 100 percent
6 disablement he will get his 100 percent disability and a
7 portion of this will be charged to the Second Injury
8 Fund on the premise that nobody develops a coronary
9 attack out of the blue. There is invariably a set of
10 predisposing factors present. I think this is accepted.

11 THE COMMISSIONER: As I understand it
12 the complaint is not that you charge half of it to the
13 Second Injury Fund; the complaint is that you don't
14 allow 100 percent disability by reason of the previous
15 disability.

16 DR. KAVANAUGH: Not since 1964, sir.
17 We have allowed the total amount of disability and
18 charged a portion.

19 THE COMMISSIONER: If a man has a heart
20 attack on the job he gets 100 percent without regard to
21 what the condition was previously?

22 DR. KAVANAUGH: If he is 100 percent
23 disabled, but the vast majority of coronaries are not
24 anywhere near 100 percent. They may be only 10 percent.
25 Very few of our coronaries are 100 percent. If he were
26 20 percent disabled he would receive a 20 percent
27 pension and half of that would be charged to the Second
28 Injury Fund, unless the circumstances were such that we
29 felt this would be unfair. If we felt that the man had
30 so much prior disease, then a larger amount would have



1 to be charged to the Second Injury Fund.

2 THE COMMISSIONER: That's what I say,
3 there are some cases then where you don't allow 100
4 percent?

5 DR. KAVANAUGH: They are rare now, but
6 there might be some. I can't offhand think of any since
7 1964, but that is not to say that we couldn't do it if
8 we felt that the man had --- assuming a man had had,
9 say, two or three coronaries and was actually still
10 experiencing chest pain, taking nitroglycerine and had
11 a heart attack ---
12 rare in a fire fighter --- in fact I don't think it could
13 arise, but assuming for argument's sake it did, then I
14 don't think that man would get the total amount of his
15 disability.

16 THE COMMISSIONER: I suppose this is
17 really what we heard yesterday. In a case of emphysema,
18 for instance, if he already had silicosis and there is
19 no argument about it he gets compensation.

20 DR. KAVANAUGH: That is right.

21 THE COMMISSIONER: If his silicotic
22 condition existed previously. Then, what about the
23 situation where a man was doing some particular type of
24 work, perhaps this word we have heard about, "caisson"
25 work, and then after he has left that job he developed a
26 heart condition. Do you suppose again you would hesitate ---

27 DR. KAVANAUGH: If the medical evidence
28 could show a relation between his heart attack and his
29 caisson disease and if he were given entitlement for
30 that when it came to pension we would assess it just as



1 we would assess any coronary, any heart attack. He would
2 get the full benefit of the permanent disability award.
3 There would be no problem from our point of view.

4 MR. GUTHRIE: Dr. Kavanaugh, is there
5 some sort of a Board order that led to this change in
6 1964, something that we can see on which you base this
7 method?

8 DR. KAVANAUGH: I don't know whether I
9 have the original order here, but, yes, there was a Board
10 order which eliminated the 50 percent cut, as it were,
11 in certain types of cases, namely, latent cases, as
12 Dr. Powell said, cases which for ease of description
13 can't be measured ~~as to~~ diabetic conditions, coronary
14 conditions.

15 MR. GUTHRIE: We would be very
16 interested in having a copy of that on file if you could
17 let us have one at a later time.

18 DR. KAVANAUGH: Yes, I have the
19 reference here. This was an order of December the 2nd,
20 1964. We could get that, surely.

21 MR. GUTHRIE: Then, I notice in the
22 brief of the Automotive Transport Association there was
23 reference made to the second injury fund and a
24 particular point was made that the operation of this
25 fund should be formalized and there is nothing more to
26 it than that statement. You have told us or Dr. Powell
27 has, that the fund is established under Section 102,
28 subsection (2) of the Act. Can you help us at all on
29 whether you consider it full formalized? I wasn't clear
30 on what that brief meant.



1 DR. KAVANAUGH: I can't help you as to
2 the accountancy of the fund. I am completely ignorant of
3 that. I can only say this, that as far as the Pensions
4 Department is concerned, yes, it is quite formalized. We
5 have followed a pattern in the use of the fund ever since
6 its inception, which I think was in the early 1940's,
7 and we have been well versed in how to use it, and I don't
8 see how more formalized it could be as far as we are
9 concerned.

10 MR. GUTHRIE: Is there any other special
11 fund operated under Section 102 (2) that you are aware
12 of, Dr. Kavanaugh?

13 DR. KAVANAUGH: Not to my knowledge,
14 unless Mr. Kerr could help you.

15 MR. KERR: The disaster fund is also
16 operated under Section 102. Section 102 of the Act is
17 the one that gives the Board the authority to set up
18 special funds that may unduly burden any particular
19 class or other circumstances that in the opinion of the
20 Board would unfairly burden the employers in one
21 particular group.

22 MR. GUTHRIE: There are two, in other
23 words, that are established under that authority?

24 DR. KAVANAUGH: There may be more than
25 two, but two come to mind at this time. I could obtain
26 further information if you so desire.

27 MR. GUTHRIE: From the standpoint of
28 accounting and reporting it seems to be quite formalized
29 in that your annual report shows the transfer of that
30 \$235,000 item you mentioned for 1965 to this Second



1 Injury Fund, and its investments are held separately, are
2 they? They appear to be, there is an income figure for
3 them and so on.

4 MR. KERR: If I may just add, Mr.
5 Guthrie, it is a formal situation, it is not an informal
6 arrangement and it is a formal arrangement authorized by
7 the Board.

8 MR. GUTHRIE: Another thing, Dr.
9 Kavanaugh, is the Second Injury Fund used at all in the
10 cases of temporary disability, or is it only these
11 permanent awards?

12 DR. KAVANAUGH: Discussion I think has
13 taken place on the extension of the Second Injury Fund,
14 but this would be out of my realm. As it is used
15 presently it is only in permanent disability cases.

16 MR. GUTHRIE: Thank you.

17 THE COMMISSIONER: Thank you.

18 MR. GUTHRIE: There was one other thing I
19 forgot, Dr. Kavanaugh, just for the record. Just for the
20 record do I understand that when this change took place
21 in 1964 there was no retroactive effect given to it, in
22 other words, you didn't go back and double up?

23 DR. KAVANAUGH: No, we don't. Usually --
24 and I think this is a universal practice in all depart-
25 ments such as mine and elsewhere --- when you change a
26 scale or alter a procedure you don't make it retroactive,
27 you only handle it from then on, so we didn't do that.

28 MR. GUTHRIE: Thank you.

29 Would you like to continue now, Dr.
30 Powell, with other matters?



1 DR. POWELL: Mr. Commissioner, I would
2 like to read in our handling and management of cardiac
3 claims or heart claims. It has been brought up several
4 times in the last three days.

5 CARDIAC CLAIMS

6 GENERAL CONSIDERATIONS

7
8 It is accepted medical doctrine that
9 coronary episodes do not happen without pre-existing
10 pathology. The majority of claims submitted to the
11 Board are concerned with the problem of coronary
12 thrombosis and its relationship to certain aggravating
13 factors arising out of and in the course of employment.
14 Such factors are severe physical exertion, lack of
15 oxygen, smoke inhalation and various noxious gases and
16 fumes, acting singly or in combination, may affect the
17 circulation to the heart muscle. Cases range in severity
18 from a relatively mild anginal attack to a prolonged
19 bout of coronary insufficiency which may result in
20 permanent damage to the heart muscle. These difficult
21 cases are always decided on the basis of the expert
22 evidence available.

23 PRE-EXISTING CONDITIONS

24
25 Most cardiologists agree that work or
26 physical exercise cannot damage a normal, healthy heart.
27 However, the problem is to know when we are dealing with
28 a "normal heart". We know that atherosclerosis involving
29 the coronary arteries is very common in this country,
30 particularly in males over the age of 30.



1 While we do not know the exact cause of
2 this condition, most cardiologists feel that high fat
3 diet, obesity, lack of exercise, tobacco, hypertension,
4 diabetes and genetic factors are significant.

5
6 CLAIMS ADJUDICATION

7 In cases involving direct trauma or
8 electrical injuries involving the heart, the causal agent
9 is usually obvious and entitlement follows. Claims are
10 not accepted where a heart condition is allegedly due to
11 general overwork, physical exhaustion, emotional strain,
12 prolonged nervous tension, or long hours at work unless
13 there is a direct causal relationship.

14 Claims are considered carefully and
15 judged on individual merit. In difficult cases, we
16 request opinions from leading cardiologists.

17
18 PERMANENT DISABILITY EVALUATION

19 Where permanent impairment of cardiac
20 function results, the patient is given the full amount
21 of the total clinical rating as an award for compensation.
22 A portion, usually fifty per cent, is charged to the
23 Second Injury Fund.

24 MR. GUTHRIE: What is atherosclerosis?
25 How does that differ from arteriosclerosis?

26 DR. POWELL: It is arteriosclerosis
27 I would say they are fairly synonymous. It is a
28 deficiency or deposition of calcium or its products
29 within the vessel wall which leads to a constriction of
30 the whole or the calibre of the vessel which is chronic



1 and may be a generalized condition.

2 THE COMMISSIONER: Then under Claims
3 Adjudication not accepted overwork, physical exhaustion,
4 emotional strain, prolonged nervous tension, long hours
5 of work unless there is direct causal relationship. What
6 would you consider to be a direct causal relationship

7 DR. POWELL: Well, a cardiac claim where
8 the causation is in doubt all pertinent factors must be
9 considered. Usually we request a local investigation.
10 This may be carried out by a trained investigator and he
11 obtains the relevant information which is the incident at
12 work, prior history of illness or heart disease, the
13 hospital medical record possibly, and laboratory tests
14 and electrocardiograms. On the basis of this complete
15 information all claims are considered carefully and
16 judged on the merits. In borderline cases we may request
17 an additional opinion from a cardiologist, as I have
18 mentioned. All relevant data including investigator's
19 notes, electrocardiograms are forwarded to the cardiologist
20 prior to the date of the examination. This further
21 opinion is often very helpful in arriving at a fair
22 decision in all cases. The benefit of a doubt is given
23 to the workman.

24 THE COMMISSIONER: What I am trying to
25 get at is what is the causal relationship?

26 MR. GUTHRIE: Are you really saying you
27 are looking for a work incident?

28 DR. POWELL: Yes. For example, the
29 classical one is a history particularly in the fatal
30 claims a fireman is carrying a woman down a ladder,



1 collapses at the foot of the ladder at the fire and dies
2 of a coronary or heart attack. This type of thing
3 happens and is an incident of work and it happened within
4 24 hours, but should he have a heart attack a week or
5 two later it may be very difficult or impossible to
6 relate it to that particular incident or time because of
7 the other factors that we mentioned which is the
8 etiology or causation or contributing factors such as
9 high obesity and the rest of the factors --again the
10 predisposing factors that are present in most of these
11 coronary cases.

12 THE COMMISSIONER: The thing is if he
13 leans over to pick up a penholder or leans down to pick
14 up one would you consider that a causal factor but if
15 he hasn't done that he is not rated for compensation, is
16 that right? Does it go that far, that is all I am trying
17 to find out, because I see you do list these things you
18 don't consider unless there is a causal relationship.

19 DR. POWELL: There should be a causal
20 relationship, yes -- violent physical exertion and the
21 rest of the things that I mentioned, activity at the
22 particular site at the time, lifting a heavy, heavy
23 weight, for example.

24 THE COMMISSIONER: All those I can
25 understand.

26 DR. POWELL: But the others are very,
27 very nebulous and would be difficult to assess; in other
28 words, he may have had his coronary at church just the
29 same as at work.

30 THE COMMISSIONER: And I suppose all of



1 these things are quite common in the public at large.

2 DR. POWELL: They are very common. This
3 is the problem that concerns the medical profession.

4 MR. GUTHRIE: Were you going to deal
5 with arthritis and rheumatism?

6 DR. POWELL: Yes, I think we might
7 mention this.

8 ARTHRITIS AND RHEUMATISM

9 SCHEDULE 3

10
11 Arthritis and rheumatism affect the
12 population as a whole and are not generally accepted as
13 being peculiar to or characteristic of a particular
14 industrial process, trade or occupation, and, therefore,
15 are not included in Schedule 3 of the Act.

16 Where a causal relationship can be
17 established between such a condition and the circum-
18 stances of employment, the Board will give favourable
19 consideration to the circumstances and determine the
20 award.

21 TRAUMATIC AND INFECTIOUS ARTHRITIS

22
23 A direct blow or fracture involving the
24 joint surface resulting in traumatic arthritis gives rise
25 to an award.

26 Infectious arthritis may also be
27 directly related to injury or subsequent complications,
28 and depending on the evidence, may result in entitlement.

29 Mr. Commissioner, we have heard Dr.
30 Swanson the other day pertinent to this factor and these



1 aspects of so-called rheumatism and he mentioned some of
2 the problems that we have when a man has an episode of
3 rheumatoid arthritis, as he mentioned, which might flare
4 up consequent to a trauma or an accident of some type;
5 in other words, a fulminating rheumatoid arthritis might
6 become evident following an injury and in these instances
7 they have to be considered, but they are not many of them.
8 They are fairly rare.

9 THE COMMISSIONER: The evidence we
10 sought to find from Dr. Swanson was whether or not
11 evidence existed with relation to mines, in the case of
12 rheumatism and arthritis similar to that which exists
13 in the case of silicosis. He produced some very striking
14 figures, though they covered a situation many years ago
15 in another country under different circumstances. Would
16 it be the workmen's --- the Workmen's Compensation Board
17 carries out research work and is doing so at the moment
18 on caisson disease. Would it be difficult to secure a
19 research worker to conduct such an inquiry here?

20 DR. POWELL: I think it is certainly a
21 very well worthwhile area to explore. The epidemiological
22 factors concerning this in getting the right researcher
23 I think might pose a bit of a problem but the problem is
24 there and I think it would be well worth a study to
25 determine in fact if the arthritis or arthrosis are more
26 common in one particular occupation as opposed to another.
27 I think the Board might be well advised to see if this is
28 not possible whether through the Board's aegis or through
29 the Department of Health because we are anxious to assist
30 and help in every way we can in the research factors in



1 determining this. The analogies between silicosis and
2 arthritis, we know what causes silicosis, but arthritis
3 is still pretty nebulous as to the cause and what part
4 repetitive or small stresses and strains on joints do
5 produce, but again the same problem, sir, except different,
6 the fact that arthritis is common in all the general
7 population and is not necessarily ---

8 THE COMMISSIONER: Well, his figures
9 showed as a result of this research that the incidence
10 among miners was, say, even 20 percent or 30 percent
11 greater than amongst the rest of the population. In his
12 case in the figures he quoted they were very much greater
13 than that. Without having to know the exact source of
14 the infection it might be sufficient to justify placing
15 it on Schedule 3.

16 DR. POWELL: Yes. I would be surprised
17 --- however, the ones that Dr. Swanson quoted to be
18 miners, practically all the miners in England certainly
19 play soccer every chance they have and in all their free
20 time. We know that soccer players all have a lot of
21 changes in their knee joints sooner or later. I add that
22 as an aside.

23 THE COMMISSIONER: I am just curious to
24 know --- I think in view of the evidence that Dr. Swanson
25 has given if it is not sufficient to put it on Schedule 3
26 at the moment it is certainly sufficient to demand some
27 very serious inquiry very promptly.

28 DR. POWELL: I would think so, sir, yes.
29 That is a very worthwhile suggestion.

30 THE COMMISSIONER: Then, what about



1 industrial diseases?

2 MR. GUTHRIE: Do you want to cover the
3 industrial disease tomorrow, Dr. Powell?

4 DR. POWELL: I think I would prefer to,
5 sir, when Dr. Mastromatteo is here and, by the same token,
6 industrial deafness. I understand there will be another
7 doctor here at another time and I would like Dr. Hogarth
8 of the Board to answer questions particularly as to how
9 the Board manages these rather difficult cases involving
10 industrial deafness.

11 THE COMMISSIONER: What is the rule of
12 thumb value for total industrial deafness? I believe
13 it is 30 percent. What is it for blindness?

14 DR. POWELL: For blindness it is 100
15 percent.

16 THE COMMISSIONER: And it is 30 percent
17 for deafness?

18 DR. POWELL: Yes, it is 30 percent.

19 THE COMMISSIONER: Right. Thank you
20 very much.

21 MR. GUTHRIE: Are there any other persons
22 present who wish to submit a brief at this time on the
23 subjects assigned for this week? None have indicated an
24 intention to speak today, sir. We have left for tomorrow
25 the Ontario Federation of Labour, International Nickel,
26 Dr. Paterson and Dr. Matromatteo, and we still have left
27 one or two other briefs that perhaps might now be read
28 into the record. It will not take a great deal of time
29 and we could tidy that part of it up.

30 THE COMMISSIONER: All right.



1943

1 MR. GUTHRIE: The first that I might just
2 refer to and not read is that of the Automotive Transport
3 Association of Ontario and it is the same reference that
4 I put to Dr. Kavanaugh a moment ago. At pages 13 and 14
5 the brief deals with the question of pre-existing
6 conditions and suggests that the operation of the Second
7 Injury Fund be formalized and that the fund be supplemented
8 from other sources to provide for payments made under the
9 Act for pre-existing injuries not attributable to
10 injuries sustained in the course of employment. It is
11 just a short passage.

12 THE COMMISSIONER: As I understood Dr.
13 Kavanaugh's evidence it applies to previous injuries
14 whether they were incurred in the course of employment or
15 not.

16 MR. GUTHRIE: That is so, but I think this
17 brief wants to call on some other source of revenue to
18 contribute to that fund and not leave it all ---

19 THE COMMISSIONER: You mean the
20 Consolidated Revenue Fund?

21 MR. GUTHRIE: I suspect that is what is
22 intended, sir, for those cases where the first injury was
23 a non-compensable one or at least because there may be
24 many first injuries that were non-compensable.

25 THE COMMISSIONER: There is the
26 suggestion that there be given to the pensioner not only
27 what we call the increased amount, enhancement value, but
28 also give him a pension for the injury that he had in
29 the first place.

30 MR. GUTHRIE: Well, to go back a little



1 earlier in the brief ---

2 THE COMMISSIONER: In other words,
3 instead of giving him 6 percent it is 4 percent plus 4
4 percent plus 2 percent for two fingers, so he would be
5 given 10 percent.

6 MR. GUTHRIE: I don't think the brief
7 intends to go that far. I think it really means that the
8 2 percent ought to come from outside the employer group,
9 from outside industry altogether.

10 THE COMMISSIONER: I see.

11 MR. GUTHRIE: Then there is a submission
12 by an individual, Mr. Charity on the question of silica
13 dust, and I leave it to your ruling, Mr. Commissioner,
14 whether that should be read in at this time or whether
15 we might give Mr. Charity an opportunity to attend at a
16 later time.

17 THE COMMISSIONER: Well, there is not
18 anything in that that is new, is there, in the Charity
19 one? I think you might give him an opportunity to come
20 in at a later time if he wants to.

21 MR. GUTHRIE: And perhaps the same would
22 apply to a brief of Mrs. Lewis as to nervous diseases.
23 I will notify her to come at a later time if she would
24 like to.

25 THE COMMISSIONER: Yes.

26 MR. GUTHRIE: Then the Motor Vehicle
27 Manufacturers' Association who have presented their
28 brief in full at an earlier time make reference to pre-
29 existing injuries at page 5 of the brief.

30 Yes, there is a short passage that I



1 could read, sir, from page 5 of the brief:

2 "We suggest that some of the
3 amendments enacted in the last
4 three years are in fact social
5 insurance, for example, the amend-
6 ment to provide compensation for
7 'disablement arising out of and
8 in the course of employment' under
9 the definition of accident (section
10 1, sub-section 1 of the Act) where
11 this permits entitlement to
12 compensation to an employee whose
13 disablement is wholly or primarily
14 due to his physical condition and
15 not the result of a work injury or
16 accident. To the extent of costs
17 of benefit awards so made, we
18 submit that industry is being
19 unfairly penalized. In addition,
20 where pensions have been retroactively
21 adjusted and charged to the employers
22 being assessed at the time of the
23 adjustment, such steps constitute
24 social legislation and at least a
25 major part of such costs should be
26 borne by all society and not just
27 current employers."

28 --- a somewhat similar point to that made in the previous
29 brief.

30 Then, the Ontario Municipal Association



1946

1 has a number of resolutions from its member municipalities
2 at page 2, first of all, a resolution from the Township
3 of Teck. It is entitled "A Resolution to Provide
4 Workmen's Compensation Penstions to Dependents of
5 Deceased Sillicotics":

6 Whereas the Municipal Welfare
7 Department exists solely for the pur-
8 pose of preventing hunger, starvation
9 and physical suffering;

10 "And whereas the Department has
11 no resource outside the Municipality;

12 "And whereas all men going to work
13 underground in the mines of Ontario
14 must pass rigid X-Ray and physical
15 examinations;

16 "And whereas all men must be
17 proved constitutionally sound, it
18 must be conceded that the development
19 of disabilities at unduly early years
20 of life is a direct responsibility
21 of his employment and its rigorous
22 requirements are burdens on both
23 the MAN and his WIFE and FAMILY.

24 "Now therefore be it resolved that
25 the Workmen's Compensation Act of
26 Ontario or 'Regulations' under the
27 Act be amended to provide payment
28 of pension to widow and dependent
29 family of man who has been recognized
30 as sillicotic and was receiving



1 compensation because of silicosis
2 immediately prior to the time of
3 death to the extent of the rate of
4 compensation he was then receiving
5 and, in addition, such further
6 pension award as may be warranted
7 having full regard to the immediate
8 effect of the silicotic condition
9 as a cause or a contributing
10 cause of death."

11 THE COMMISSIONER: As I understand the
12 evidence we have heard that is done.

13 MR. GUTHRIE: Except to the extent that
14 the death benefit may be limited by the amounts provided
15 in the Act. They want to relate the widow's pension to
16 the compensatin immediately prior to the time of death.

17 THE COMMISSIONER: Oh, yes, I see. They
18 want to extend the compensation he has already been
19 receiving. The amount he was then receiving would
20 probably not be very much. If he was silicotic and
21 working he would have been getting a greater pension or
22 maybe no pension. If he is getting pension, then he
23 couldn't have been working according to what we have
24 heard --- and "such further pension award as may be
25 warranted having full regard to the immediate effect of
26 the silicotic condition as a cause or a contributing
27 cause of death". If it was considered that that was
28 the cause of death, I suppose she would get the full
29 compensation, wouldn't she?

30 MR. KERR: If the silicotic died as a



1948

1 result of his compensable condition, sir, there would be
2 no doubt she would be entitled to the statutory allowance
3 provided for widows and dependents. I think the brief
4 goes a little further as I remember reading it. I think
5 they suggested that compensation should be paid in all
6 cases where there is silicotic ---

7 THE COMMISSIONER: It says where there
8 was silicosis, and he was drawing compensation"that
9 amount should be continued and in addition such further
10 pension as may be warranted having full regard to the
11 immediate effect of the silicotic condition as a cause
12 or a contributing cause of death."

13 MR. KERR: Yes.

14 THE COMMISSIONER: That is really what
15 is done now, isn't it?

16 MR. KERR: Yes, except they are suggesting,
17 I think, that the compensation should continue regardless
18 of the cause of death and that we should in addition pay
19 "such further pension as may be awarded having regard to
20 the immediate effect of the silicotic condition as a
21 cause or contributing cause of death".

22 THE COMMISSIONER: In other words, a man
23 with silicosis might die and yet you would say the
24 silicosis had nothing to do with the cause of his death
25 and as a consequence his family would not be pensionable,
26 is that it?

27 MR. KERR: In that case we have no
28 authority to pay the widow a pension because the death
29 was not the result of a compensable silicotic condition.

30 THE COMMISSIONER: I understand.



MR. GUTHRIE: The next resolution in that same brief, No. 2:

"To Compensate for Silicosis where Tuberculosis also Develops; Compensation Where Employee Disqualified After Ten Years of Service

"Whereas the Workmen's Compensation has organized a system of X-Ray and physical examination of men before their employment underground in mines of Ontario;

"And whereas the development of Medical Practice can and now does determine the 'existence of' or non-existence of' tuberculosis and other constitutional disabilities;

"And whereas Workmen's Compensation is based on the principle of 'Insurance', which is so widely approved by business and industry in Ontario;

"And whereas the Workmen's Compensation Board may and in fact does advise withdrawal of men from underground and other 'dust exposure', and the Workmen's Compensation Board does practice such action under the Workmen's Compensation Act of Ontario;

"Now therefore be it resolved



1 that the Workmen's Compensation Act
2 or its 'Regulations', as the case
3 may be, be amended to ensure
4 (a) Recognition of 'silicosis' accident
5 where tuberculosis and other
6 constitutional disability may
7 have developed before or after
8 employee has been brought from
9 exposure on advice or orders of
10 Workmen's Compensation Board
11 Examiners or Department of Health
12 Institutions or Institutions
13 recognized by the Ontario
14 Department of Health;
15 (b) Payment of compensation under
16 the Act for industrial accidents
17 where the Workmen's Compensation
18 Board disqualifies employee after
19 ten years service or employment."

20 MR. GUTHRIE: Mr. Kerr, have you a comment
21 on the first aspect of that? It seems to me again that
22 that is already the policy of the Board to recognize
23 tuberculosis that may have developed.

24 THE COMMISSIONER: No, they will refuse
25 to renew his licence if he has got tuberculosis, but
26 there has been no silicosis in evidence. They won't
27 allow a tubercular miner to go in there. That is the one
28 ground on which they can disqualify a man for two years.

29 MR. KERR: Yes, according to The Mining
30 Act.



1 THE COMMISSIONER: Yes. Of course, you
2 don't accept that it is a compensable injury, do you,
3 Mr. Kerr?

4 MR. KERR: I interpret this as meaning
5 that they want recognition of silicosis where tuberculosis
6 develops.

7 THE COMMISSIONER: That is what I thought.

8 MR. KERR: I don't know if Dr. Brennan
9 mentioned this morning that when a man has silicosis and
10 tuberculosis is accompanied with it we admit the man to
11 a sanitarium and we treat him for his tuberculosis
12 condition. I believe that was stated by our medical
13 representative this morning.

14 MR. GUTHRIE: That was my thought under
15 (a) there.

16 MR. KERR: Yes, once silicosis has been
17 accepted.

18 MR. GUTHRIE: That was my thought under
19 the (a) part. The (b) part is the disqualification.

20 THE COMMISSIONER: I think under (a)
21 they were talking about "where tuberculosis and other
22 constitutional disabilities may have developed before
23 or after employee has been brought from exposure on
24 advice or orders of Workmen's Compensation Board Examiners
25 or Department of Health Institutions or Institutions
26 recognized by the Ontario Department of Health".

27 MR. GUTHRIE: In that event tuberculosis
28 would have to be separately recognized.

29 THE COMMISSIONER: If they refuse you
30 a licence or your doctors refuse you a licence for



1 tuberculosis you don't treat it as compensable, do you,
2 unless there is silicosis?

3 MR. KERR: No, sir.

4 THE COMMISSIONER: Do you give him
5 medical treatment?

6 MR. KERR: Well, if tuberculosis is not
7 associated with the silicosis, then it is not a
8 responsibility or something we can accept under the
9 Workmen's Compensation Act.

10 THE COMMISSIONER: Whether it comes
11 before or after?

12 MR. KERR: As previously stated,
13 tuberculosis is in Schedule 3, but it is restricted to
14 hospitals and laboratories.

15 MR. GUTHRIE: To put it simply, the Board
16 and its medical advisors do not recognize the causal
17 connection between work and tuberculosis except where
18 there is also a silicotic condition?

19 MR. KERR: In cases of silicosis that
20 is correct.

21 Now, with respect to (b) would you like
22 me to comment on that?

23 MR. GUTHRIE: Yes.

24 MR. KERR: In (b) they say:

25 "Payment of compensation under the
26 Act for industrial accidents where
27 the Workmen's Compensation Board
28 disqualifies employee after ten
29 years service or employment."

30 The only possibility of his disqualification would be the



1 point which you have discussed. We cannot tell a miner
2 not to work in exposure employment. This is a decision
3 that he must make, and there are cases, as indicated this
4 morning, where we would encourage him to seek rehabilita-
5 tion and we would assist him in retraining in another
6 field, but we cannot disqualify a man from exposure
7 employment under the Workmen's Compensation Board.

8 THE COMMISSIONER: I don't follow you at
9 all. You can always disqualify him for TB.

10 MR. KERR: That is under The Mining Act,
11 Mr. Commissioner.

12 THE COMMISSIONER: And that is the only
13 ground on which you could disqualify him after ten years
14 service, isn't it?

15 MR. KERR: That is right, sir.

16 THE COMMISSIONER: What you are saying is
17 if he has worked there for ten years he ought to have a
18 pension anyway if he is disqualified from working further
19 by your action.

20 MR. KERR: That is what they are
21 suggesting, yes.

22 MR. GUTHRIE: The third resolution:

23 "Request for Board to Study the
24 Full Effects of the Inhalation of
25 Silica Dust on the Human Body.

26 "From the Town of Timmins

27 "Whereas it is an established fact
28 that exposure to and the subsequent
29 inhalation of silica dust damages the
30 lungs and thus impairs the respiratory



1 system; and

2 "Whereas the end result of the
3 inhalation of the silica dust over
4 a long period of time is the disease
5 or ailment commonly known as silicosis;
6 and

7 "Whereas it has long been
8 established that exposure to silica
9 dust can and has resulted in death
10 to some employees while it has
11 forced others into early retirement;
12 and

13 "Whereas silicosis is accepted as
14 an industrial disease and is compen-
15 sable as such under the Workmen's
16 Compensation Act; and

17 "Whereas it has been stated by
18 many professional men including
19 doctors that exposure to silica dust
20 can and does result in other physical
21 ailments and diseases; and

22 "Whereas the extent of these
23 physical ailments and diseases
24 should be accurately determined in
25 order that they will also be compen-
26 sable as an industrial disease under
27 the Workmen's Compensation Act;

28 "Therefore be it resolved that
29 the Ontario Government be petitioned
30 to set up an impartial Board of Doctors;



1 specialists in the field of respiratory
2 diseases to study the full effects that
3 the inhalation of silica dust has on
4 the human body and that the results
5 of the study be made public and form
6 the basis for any necessary changes
7 in the Workmen's Compensation Act."

8 THE COMMISSIONER: I suppose they had in
9 mind the sort of thing that was done by Dr. Schepers
10 and which should continue.

11 MR. GUTHRIE: I think it is these
12 related things like emphysema and chronic bronchitis
13 that probably are in mind there. I understand that
14 silicosis itself has been widely studied, but it is these
15 related dust diseases which are probably what are in the
16 minds of the framers.

17 Perhaps tomorrow when Dr. Paterson is
18 with us he might be questioned ---

19 THE COMMISSIONER: I understand he is
20 quite an authority on this subject.

21 MR. GUTHRIE: I understand he is quite an
22 authority, and perhaps he can indicate what further
23 research might be in order or is planned.

24 And then resolution 4:

25 "Provide Results of Post Mortem
26 on Lung and Heart to Families of
27 Deceased Claimants and/or Estate
28 Representatives

29 "From the Town of Timmins

30 "Whereas at present when the



1 Workmen's Compensation Board requests
2 a post mortem on lungs and heart,
3 the results go only to the Workmen's
4 Compensation Board;

5 "Be it therefore resolved that
6 the Workmen's Compensation Act of
7 Ontario be amended to make available
8 to deceased claimants' immediate
9 families, executors, or counsel,
10 post mortem findings upon request,
11 and that the provincial government
12 enact the necessary laws or regula-
13 tions to permit immediate families
14 of deceased claimants or counsel to
15 obtain directly from the hospital,
16 free of charge, a post mortem
17 examination on lungs and heart."

18 THE COMMISSIONER: I see, a post mortem
19 on lungs and heart. I see this is looking for right-side
20 heart troubles, but in any event the post mortem is
21 requested and it is granted by the dependants. Is there
22 any particular reason, Mr. Kerr, why they should be
23 refused the results of the post mortem?

24 MR. KERR: I am not familiar with our
25 practice, sir, but if they have given permission I don't
26 see why we couldn't give them that information. I will
27 check and find out what our practice is for you, sir.

28 THE COMMISSIONER: You might let me know.

29 MR. GUTHRIE: The general section
30 against privilege perhaps is what the Board is worried



1 about, but on the other hand, if the permission is given
2 one would think that would be conditional on the results
3 being disclosed.

4 THE COMMISSIONER: Well, the objections
5 that exist to giving the doctors' reports do not apply
6 to this.

7 MR. GUTHRIE: No.

8 MR. KERR: I would see no objection, sir.

9 MR. GUTHRIE: I believe that is all there
10 is in that brief, Mr. Commissioner

11 The Retail Council of Canada, again an
12 organization whose brief was presented in full at one
13 time, have a reference at page 2

14 "Sections 3, 115 and 116. Aggravation
15 of Offences in Certain Conditions

16 The determination of whether an
17 existing condition has been aggravated
18 by an employee's work and the extent
19 of that aggravation is always a
20 difficult task. The Council knows
21 the Board gives such cases close
22 scrutiny and it wishes to express its
23 hope that the Board continues to treat
24 such incidents with particular care.

25 It is our understanding that at one
26 time the Board required proof of an
27 actual accident that caused the
28 aggravation. Apparently, the Board no
29 longer requires proof of such an
30 occurrence. While not infallible, it



1958

1 appears to us that the Board's former
2 practice was reasonable and as prac=
3 ticable a test as any, and we recommend
4 that, in the absence of any better
5 criterion, consideration be given to
6 its readoption."

7 I don't think that that is quite an
8 accurate statement of the Board's new practice as we
9 have just had it outlined, Mr. Commissioner.

10 THE COMMISSIONER: Well, let me have a
11 look at this.

12 MR. GUTHRIE: That is the Retail Council
13 of Canada at page 2.

14 THE COMMISSIONER: That is a pious hope
15 that the Board will start to be a little tougher.

16 MR. GUTHRIE: Perhaps.

17 THE COMMISSIONER: I do not think it
18 calls for anything from me. Obviously it is one of the
19 difficult fields in which the Board has to operate.

20 MR. GUTHRIE: That completes the briefs
21 that need to be read in, Mr. Commissioner, and there is no
22 other work scheduled for this sitting.

23 THE COMMISSIONER: Well, I will be glad
24 to sign off until tomorrow morning, unless there is
25 anything anybody has to say further.

26
27
28 ==At 4:20 p.m. the Hearing adjourned.
29
30

PROVINCE OF ONTARIO

ROYAL COMMISSION

ON

THE WORKMEN'S COMPENSATION ACT

HEARINGS HELD AT
TORONTO, ONTARIO

VOL. NO.

DATE

14

20 October 1966

Official Reporters

NETHERCUT & YOUNG LIMITED
48 York Street
TORONTO 1, ONTARIO
TELEPHONE 363-3111



Nethercut & Young

Toronto, Ontario

IN THE MATTER OF The Public Inquiries
Act, R.S.O. 1960, Ch. 323

- and -

IN THE MATTER OF an Inquiry Into and
Report Upon The Workmen's Compensation
Act

BEFORE: The Honourable Mr. Justice G.A.
McGillivray, Commissioner, at
Room 200, 67 Richmond Street
West, Toronto, Ontario, on Thursday
October 20, 1966.

APPEARANCES:

W.Z. Estey, Q.C.)
and)
H.D. Guthrie)

Counsel to the Commission

C.R. Osler, Q.C.

For International Nickel
Co. of Canada Ltd.

W.R. Kerr)
Dr. A.B. Powell)
Dr. Mastromatteo)

Workmen's Compensation Board

Mr. R.L. Smith

Department of Mines



Nethercut & Young

Toronto, Ontario

INDEX

Page No.

1		
2	Workmen's Compensation Board	1960
3	Department of Mines	2002
4	Dr. J.F. Paterson	2012
5	International Nickel Company	2023
6	Dr. Kavanaugh	2065
7	Dr. Mastromatteo	2067
8		
9		

EXHIBITS

10			
11	24	Report of Ontario Department of Health, 1964	2001
12	25	Report of Ontario Department of Health, 1965	2001
13	26	Table of Non-traumatic Back cases of International Nickel Company	2037
14			
15	27	Table of Incidence of Back Injury to N. I. C., International Nickel Company	2037
16			
17	28	4 Photographs marked A, B, C and D.	2041



1
2 ---ON COMMENCING AT 10 00 A.M.

3 MR. GUTHRIE Mr. Commissioner, we have
4 this morning Dr. Powell again of The Workmen's Compensa-
5 tion Board, and with him is Dr. Mastromatteo of the
6 Environmental Health Branch, who is also a consultant
7 to the Board, and they are prepared to deal with the
8 subject of Industrial Disease. But, before I ask them
9 to move to the stand, I think I might enquire if there
10 are any other persons present who have a brief to present
11 on the subjects announced for this week. If not, Dr.
12 Powell, could you proceed, with Dr. Mastromatteo.

13 Mr. Commissioner, Dr. Powell's material
14 is in the sheaf of documents that he handed to you
15 yesterday, but the one he is dealing with today is not
16 covered.

17 THE COMMISSIONER: Yes, Doctor.

18 DR. POWELL: Thank you, Mr. Commissioner.
19 With me, Mr. Commissioner, is Dr. Ernie Mastromatteo,
20 who is the Chief of Occupational Health Service, Environ-
21 mental Health Branch of the Ontario Department of Health.

22 I wish to just outline our practice at
23 the Board with relation to Industrial Diseases.

24 INDUSTRIAL DISEASES

25
26 COVERAGE UNDER THE ACT

27 All industrial diseases giving rise to
28 disability are covered either by Section 1(1)(a) and
29 (iii).

30 "Disablement arising out of and in the



course of the employment", or Section
1(1)(i).

"'industrial disease' means any of the
diseases mentioned in Schedule 3 and any
other disease peculiar to or character-
istic of a particular industrial process,
trade or occupation"

or by Section 116 which provides coverage for industrial
diseases, and under the Act which covers a
multitude of diseases closely related to specific industrial
processes such as anthrax; tetanus, diphtheria, tuberculosis;
epithelioma, cancer or ulceration of the skin due to
tar, pitch, bitumen, mineral oil or paraffin, or any
compound, product or residue of any of these substances;
compressed-air illness or caisson disease; dermatitis
venenata, poisoning and its sequelae by arsenic, benzol,
beryllium, brass, nickel or zinc, cadmium, carbon
bisulphide, carbon disulphide, carbon monoxide, chlorinated
hydrocarbons (methylene chloride, tri-chlorethylene,
tetrachloroethane, hexachlorocyclopentadiene and others), chrome
lead, mercury, nitro-derivatives and amino-derivatives
of benzene, phenol and their homologues, trinitrotoluene,
dinitrochlorobenzene and others), nitrous fumes, phos-
phorus; the pneumoconioses other than silicosis; any
disease due to exposure to x-rays, radium or other
radioactive substances; respiratory disease due to the
inhalation of materials used in hot metal sprays,
retinitis due to electric-welding or acetylene-welding;
silicosis, tetanus, tuberculosis contracted by a
workman employed by and in a hospital, jail, sanatorium,
convalescent home, nursing home, home for the aged,



1 he ... association to which Part
2 I ... the ... reform institution,
3 health ... operated by the Province
4 of Ontario, ... surface of the
5 eye, due to tar, pitch, bitumen, mineral oil or paraffin,
6 or any compound, product or residue of any of these sub-
7 stances

8 This is a particularly long list. It
9 is just to indicate the extent of Schedule 3

10 CONSIDER. You have enumerated
11 a number of diseases covered by Schedule 3. Is there a
12 presumption in all these cases that it is an injury which
13 is ent

14 exposure to ... It is
15 exposure to ...
16 ... at these places, under
17 the circumstances set out in Column

18 ...
19 ... and the com-
20 ...
21 ...
22 ...
23 ...

24 DEPARTMENT OF HEALTH
25 ...
26 ...
27 ...
28 ...
29 ...
30 Industrial Health ... the Board through on-the-job



1 evaluation of industrial conditions.

2 MR. GUTHRIE: Dr. Powell, what is the
3 Department of Industrial Hygiene? I don't believe we
4 have heard of that before. That is different from the
5 Environmental Health Branch.

6 DR. MASTROMATTEO: The Environmental
7 Health Branch is one of the branches in the Health
8 Department. It is not a department per se.

9 MR. GUTHRIE: This other department,
10 the Industrial Hygiene Department, is what?

11 DR. MASTROMATTEO: This was another
12 name for the - it was called the Industrial Health
13 Branch. It was changed in July of this year to the
14 Environmental Health Branch.

15 MR. GUTHRIE: They are one and the
16 same, are they?

17 DR. MASTROMATTEO: They should be con-
18 sidered the same.

19 MR. GUTHRIE: Dr. Powell, I notice under
20 Sub-section 13 of Section 116, it says:

21 "The Board, subject to the approval of
22 the Lieutenant Governor in Council,
23 may declare any disease to be an
24 industrial disease and may amend
25 Schedule 3 accordingly."

26 I have a number of questions arising from that power.

27 First of all, can you tell me when the Board last
28 exercised it, or does it exercise it, let me put it that
29 way?

30 DR. POWELL: I am not aware of it being



1 exercised. The Board hasn't had to do this in this
2 instance.

3 THE COMMISSIONER: Do you find that
4 Section 1(1)(a) and (iii), Section 116, deal with that?

5 DR. POWELL: Yes; and in Schedule 3
6 it gives a certain amount of flexibility in decision-
7 making.

8 MR. GUTHRIE: Where you state in your
9 submission that the new industrial processes are evaluated,
10 I take it there is a continuing sort of review as these
11 processes develop and that rather than seeking to add
12 specific diseases and processes to Schedule 3, it is the
13 policy of the Board, rather, to rely on the other part
14 of the definition.

15 DR. POWELL: That is true.

16 MR. GUTHRIE: Instead of having it
17 named in the Schedule each time.

18 DR. POWELL: Yes, to make it as blanket
19 as possible, because there are so many new things being
20 added each day and each week in industrial processes
21 that it is very difficult to keep adding to them. It
22 would make it a cumbersome thing. Those things listed
23 in Schedule 3 make it a workable way of handling those
24 conditions, because anything associated with industry is
25 covered, and by working with the Department, often the
26 Department will be made aware before that some particular
27 substance may be noxious and would inform us that there
28 is this possibility, and this is why it is a hand-in-
29 glove arrangement with the Environmental Health Branch,
30 so that we can anticipate in some instances or possibly



1965

1 feel that there may be something coming out of a new
2 process and this comes under toxicology and comes under
3 the Director of the Environmental Health Branch of the
4 Department of Health.

5 MR. GUTHRIE: So at first glance it
6 might look as though Schedule 3 were behind the times,
7 but it is a fact that there is a much vaster group of
8 diseases than was visualized.

9 DR. GUTHRIE: Yes. You may
10 question now the advisability of retaining Schedule 3,
11 historically.

12 MR. GUTHRIE: The Board is considering
13 the whole issue of retaining Schedule 3.

14 DR. POWELL: Well, it is a guide. I
15 think it is explanatory. It is like any other text book;
16 it is basically the same, but as years go on it is
17 relative. But I think as a working guide, Schedule 3
18 is informative.

19 MR. GUTHRIE: We didn't suggest then,
20 from the Board's standpoint that it should be done away
21 with?

22 DR. POWELL: I don't think it should be
23 disposed of.

24 MR. GUTHRIE: The difficulties that
25 lawyers would have with it, the same as the unions have
26 with it, is that by expressing some opinion it would
27 appear you are excluding others.

28 DR. POWELL: Yes, that is right.

29 THE COMMISSIONER: The difficulty the
30 unions have with it is in the definition, and I feel the



1 definition of industrial disease means any of the diseases
2 mentioned in Schedule 3 and any other disease peculiar to
3 or characteristic of a particular industrial process. As
4 I understand their submission, they say, well, it might
5 be difficult for them to establish, even though it did
6 arise from a particular industrial process, that it was
7 peculiar to that particular industrial process. I think
8 it is ^{the} wording of that section. At least it is because of
9 the wording of that section that they prefer to have
10 specific enumerations in Schedule 3 which allow a pre-
11 sumption in their favour.

12 DR. POWELL: Yes. I think, too, they
13 would want to be able to say - I think a good example of
14 this is industrial deafness, but it is not down here in
15 Schedule 3. I think they want to point this out to the
16 uninitiated that it is here, and I think this is an area
17 which causes some problem.

18 What would you say, Dr. Mastromatteo?

19 DR. MASTROMATTEO: Yes, Mr. Commissioner.
20 I think one of the difficulties in scheduling all diseases
21 is that in industry there are at least half a million
22 chemical compounds in use and it is impossible to state
23 all conditions which may arise from a specific exposure.
24 This schedule arose from a historical background and it
25 has provided a good framework, and I think there is
26 enough broad coverage under the blanket provision that
27 would cover disease arising out of these half a million
28 compounds that I referred to. It is impossible to really
29 list them individually; there are so many materials and
30 substances in industry today.



1967

1 MR. GUTHRIE: What is the significance,
2 Dr. Powell, or what follows if there is no process
3 specified opposite "Process" in Schedule 3? Does that
4 mean it is given the broadest interpretation as to how
5 it arises from work?

6 DR. POWELL: For example, the skin.

7 MR. GUTHRIE: Yes, 9. I was thinking
8 more of 8, pneumoconiosis.

9 DR. POWELL: Pneumoconiosis, again, is
10 a very broad classification. It includes asbestosis and
11 byssinosis, which is exposure to cotton fibre. We have
12 another which is called farmer's lung. So this covers
13 any diseases which involve the lung or toxic or noxious
14 materials.

15 MR. GUTHRIE: Strictly speaking, there
16 are difficulties in interpreting 8 of Section 116, which
17 states:

18 "If the workman at or immediately before
19 the date of the disablement was employed
20 in any process mentioned in the second
21 column of Schedule 3 and the disease
22 contacted is the disease in the first
23 column of the Schedule set opposite to
24 the description of the process,"
25 and so on, and then the presumption is stated. But in
26 the case of pneumoconiosis he cannot say he was employed
27 in any process stated in the second column, and I wondered
28 what you do about that.

29 DR. POWELL: The same thing for bursitis,
30 Number 3, and dermatitis.



1 THE COMMISSIONER: If it isn't restricted
2 in the second column to a particular industry, then the
3 whole of the industrial work is open to you in consider-
4 ing that?

5 DR. POWELL: Yes. You cannot say that
6 bursitis is commoner to one particular industry than to
7 another. It is a very loose term which can be involved
8 in a particular type of work.

9 MR. GUTHRIE: Would you tell us what
10 bursitis is?

11 DR. POWELL: Well, bursa, there are
12 several in the body. They are usually cushions, and they
13 may be developed and these are developed usually over
14 tendons and joints and filled with lubricating fluid,
15 and by injury they can interfere with the movement of the
16 joint and it can become painful, particularly due to
17 repetitive action or work.



1969

1 THE COMMISSIONER: Dr. Powell, you are
2 acquainted with more or less with the various Acts in
3 the various provinces of Canada. In any of those Acts,
4 have they done away with Schedule 3 or do they all conform
5 in having a Schedule 3? Do you know of any in which the
6 schedule has been dispensed with

7 DR. POWELL: I don't know any that don't
8 have a Schedule 3.

9 MR. GUTHRIE: Is there any official
10 list kept by the Board apart from Schedule 3 of these
11 many other diseases?

12 DR. POWELL: Other than an awareness,
13 I don't know of any particular separate list.

14 MR. GUTHRIE: It is not a published thing?

15 DR. POWELL: Not a published list, no.
16 Are you aware of any, Dr. Mastromatteo?

17 DR. MASTROMATTEO: Files are retained
18 on all the agents which have been accepted as causing
19 occupational disease. These are available on cards in
20 the section dealing with occupational diseases at the
21 Board, so there would be reference to these within the
22 Board.

23 DR. POWELL: But there is no list?

24 DR. MASTROMATTEO: But there is no list,
25 as such.

26 MR. GUTHRIE: I have no other questions
27 of Dr. Powell, Mr. Commissioner, but I thought Dr.
28 Mastromatteo might be able to assist us. Doctor, could
29 you, first of all, tell us your background and position
30 and occupation?



1970

1 DR. MASTROMATTEO: My name is Ernest
2 Mastromatteo. I graduated from the University of Toronto
3 in 1947, obtained a diploma in public health in 1950, a
4 diploma in industrial health in 1958, certified as a
5 specialist in occupational medicine by the American Board
6 of Preventive Medicine. I have been employed with the
7 then known Industrial Hygiene Branch since 1952 and my
8 present position is Chief of Occupational Health Service,
9 Environmental Health Branch of the Ontario Department of
10 Health.

11 MR. GUTHRIE: Would you tell us a little
12 about the work done by the Environmental Health Branch?

13 DR. MASTROMATTEO: The environmental
14 Health Branch is concerned about all aspects of the environ-
15 ment which may have effect on the health of the general
16 public. This deals with air pollution, the use of
17 pesticides, it deals with waste management disposal. The
18 section with which I am concerned deals with the effects
19 of agents on the health of the worker.

20 In a man's job, he may be exposed to
21 a great variety of agents, some physical agents, some
22 chemical agents, some biological agents and some plant
23 agents like wood dust and plant dust. Any of these may
24 cause adverse health effects.

25 MR. GUTHRIE: And as those are discovered,
26 as I understand Dr. Powell's submission, there is a
27 reporting or a liaison with The Workmen's Compensation
28 Board.

29 DR. MASTOMATTEO: There is a very close
30 liaison with the Workmen's Compensation Board. If, for



1971

1 example, they are asked to make an investigation or make
2 an investigation because of our own initiative and we
3 find something which we feel may give rise to claims to
4 The Workmen's Compensation Board, we notify The Workmen's
5 Compensation Board and advise them of this and of our
6 interest and we make available to them copies of all
7 investigation reports.

8 MR. GUTHRIE: And does it work the other
9 way around, Doctor? Is the Board seeking your advice on
10 problems that it learns of perhaps before you started to
11 investigate them?

12 DR. MASTROMATTEO: Yes, it is a two-way
13 exchange. Quite often we hear of environmental conditions
14 or occupational conditions from the Board and we are asked
15 by them to investigate and make a report to them. So it
16 is a two-way exchange.

17 MR. GUTHRIE: And in terms of the
18 personnel in your branch, who exactly maintains liaison?
19 Is it yourself, or Dr. Sutherland whom we have heard?

20 DR. MASTROMATTEO: Liaison is maintained
21 chiefly through Dr. Sutherland^{or}/myself. However, at
22 inter-levels, the Board staff contact members of our
23 staff directly. Some staff, for example, may contact our
24 laboratory staff and say they are submitting a sample
25 for analysis. Some staff may contact our engineering
26 staff directly. So there are contacts at various levels
27 in both the Board and in our own organization. Most of
28 it is channelled through me, I would say.

29 MR. GUTHRIE: Do you attend personally
30 at the Board on occasion?



1972

1 DR. MASTROMATTEO: Yes, I attend at The
2 Workmen's Compensation Board generally on Friday of each
3 week and I review some occupational disease claims of
4 interest. I go through the claims which have been made
5 to the Workmen's Compensation Board, pick out those which
6 I think need investigation or need comment and sometimes
7 in the other way the Board sometimes presents claims to
8 me for my opinion as to their ^{importance} /from the point of view of
9 their occupational exposure.

10 MR. GUTHRIE: Have you, yourself, much
11 to do with the silicotic conditions and respiratory
12 diseases, or is that more Dr. Sutherland's job?

13 DR. MASTROMATTEO: Dr. Sutherland deals
14 more with silicosis as a member of the Silicosis Referee
15 Board. However, I am intimately involved with other
16 respiratory diseases which can arise in a patient.

17 MR. GUTHRIE: Can you tell us what they
18 are and something about them, because I think we may have
19 heard about them earlier in this Commission.

20 DR. MASTROMATTEO: Unfortunately, I was
21 away earlier this week and I don't know what has been said.

22 MR. GUTHRIE: We have been hearing a
23 good deal about emphysema and chronic bronchitis. Are
24 those the things you deal with?

25 DR. MASTROMATTEO: When I spoke of other
26 respiratory diseases, I had in mind such things as acute
27 inflammation of the trachea or bronchitis or the lung
28 itself and many chemical agents can give rise to acute
29 irritation. I had in mind also, bronchial asthma which
30 can arise from certain chemical agents and this illustrates



1 one of the difficulties of scheduling these things.
2 There is a well-known chemical which is capable of giving
3 rise to a condition in man similar to bronchial asthma
4 and it would be most difficult to try to cover all these
5 in a specific schedule. I have in mind, too, the question
6 of emphysema, chronic bronchitis, which some people feel
7 may arise from contact with various agents at work. As
8 you know, this is an area of great controversy. In my
9 opinion, the evidence to date shows that there is no
10 concrete association between chronic bronchitis and
11 emphysema and the exposure to specified occupational
12 agents at work.

13 This does not remove the ability of the
14 Board to decide in any particular case.

15 DR. GUTHRIE: Doctor, have you been
16 doing particular studies on this subject you have just
17 referred to, the chronic bronchitis and emphysema on
18 which you based that opinion, or is it from reading
19 literature?

20 DR. MASTROMATTEO: My opinion is based
21 on reading the literature and maintaining contact with
22 the occupational health conditions generally - fairly
23 close contact with the literature and also, I am a
24 representative on the committee which meets to establish
25 safe limits of materials in working environments. From
26 contact with these committee members there is abroad
27 exchange of opinion.

28 MR. GUTHRIE: Doctor, am I correct in
29 stating that you have had an opportunity to read the
30 briefs on this subject which have been submitted by the



1 Unions?

2 DR. MASTROMATTEO: I have had the
3 opportunity to read a number of these briefs.

4 MR. GUTHRIE: There are four, I think. I
5 hope I am not missing any. I thought I might just give
6 you a quick summary of each and ask if you would care to
7 comment on your experience and opinions in these various
8 areas. The brief of The Labourers' International Union
9 which we heard presented yesterday dealt extensively
10 with Caisson disease which, of course, is already in
11 Schedule 3, but there was a further discussion about
12 various sequelae, if that is the right word that may or
13 may not be properly attributable to Caisson disease. Can
14 you help us with that?

15 DR. MASTROMATTEO: Well, there are
16 sequelae, after-events, occurring in workers who have had
17 Caisson's disease. These are reported in the medical
18 literature and are well-known. Some of these sequelae
19 are accepted in the process of bone and neurological dis-
20 orders and these have been established. I don't recall
21 reading this brief in particular as it relates to Caisson
22 disease, but if other claims are made I would have to
23 express individual opinions on that.

24 MR. GUTHRIE: The one I was thinking of
25 was the question of the heart and a case was cited where
26 a man who had worked in compressed air, 32-1/2 pounds
27 pressure, died several months later of general heart
28 deterioration and received no compensation because of
29 the lack of evidence showing the causal relationship and
30 because the initial examination failed to disclose whether



1 There was any pre-existing heart condition. Can you
2 help us at all on whether there is a relationship there?

3 DR. MASTROMATTEO: Mr. Commissioner,
4 this is a very broad area. Heart disease is a disease
5 which has many causal relationships, many of them unknown
6 yet - factors such as inherited tendencies including
7 body build which is inherited, diet, build, social
8 factors as well as physical activity and cigarette
9 smoking. There are a multitude of factors involved in
10 trying to assess heart disease in an individual.

11 My overall impression, to deal with
12 that point you raise, is that heart disease has not been
13 shown to be associated with work under increased atmos-
14 pheric pressure.

15 MR. GUTHRIE: That brief went on to
16 mention arthritis and rheumatism. Now, that may be a bit
17 outside your field (we heard Dr. Swanson on that subject)
18 unless you care to comment, Doctor, but the labourers
19 asked that those two be recognized as industrial diseases
20 and included in Schedule 3, where any workman engaged
21 in a process involving exposure to wetness, draught,
22 weather and repetitive stress. Am I asking you something
23 that is beyond your particular specialty?

24 DR. MASTROMATTEO: I don't like to pose
25 as an expert really, because I think it is a very
26 difficult area. However, in our branch, we maintain a
27 library in which all information that we can find relating
28 to occupational health is catalogued and put on cards
29 and, actually, this is a question with which we are con-
30 cerned because it relates to the health of the worker.



1 In reading through these cards, you will find statements
2 in the literature on arthritis and rheumatism, particularly
3 in the English literature, ^{that it} is related to extremes of hot
4 and cold and work in bad conditions, but my own general
5 impression is that there is no specific relationship
6 between these working conditions and arthritis and
7 rheumatism.

8 MR. GUTHRIE: Dr. Swanson told us of a
9 study in England in the coal mines some years ago which
10 indicated some very startling figures, but he was not
11 aware of a similar study in this country, except in
12 Pennsylvania which, again, was coal. Are you aware of
13 any figures or reports on mining in Northern Ontario and
14 its result on arthritic conditions?

15 DR. MASTROMATTEO: I am not aware of
16 any studies done in the Ontario Mines.

17 MR. GUTHRIE: Is that an area where
18 research might be profitable, Doctor?

19 DR. MASTROMATTEO: Yes, I think research
20 in many of these questions would be profitable. The
21 question of research is one of priority, however, and
22 unless there was convincing evidence that there was some
23 demonstrated increase in these people, then I think this
24 would merit research in this area, but I don't even have
25 information that there is some incidence that is apparent
26 on a crude look at the situation.

27 MR. GUTHRIE: You mentioned priority.
28 Do you care to say what might be a priority matter in this
29 field? Is there something that is crying out for study?

30 DR. MASTROMATTEO: I think as far as I



1 am concerned personally, one area of interest to me is the
2 association between asbestos and ill health which is
3 undergoing active study by our branch. Another area is
4 the question we touched on of the relationship of
5 bronchitis and occupation, which I think should be in-
6 vestigated among occupational groups in Ontario.

7 Another area of research which I
8 personally think might merit investigation is respiratory
9 illness in welders. These are three areas, I think, that
10 merit research.

11 MR. GUTHRIE: Is asbestosis the disease
12 that arises from working with asbestos?

13 DR. MASTROMATTEO: Asbestosis is one of
14 the diseases which may arise.

15 MR. GUTHRIE: I notice it is not included
16 in the third schedule for British Columbia and Quebec.

17 DR. MASTROMATTEO: It would be included
18 in our schedule under pneumoconiosis. It is a form of
19 pneumoconiosis.

20 MR. GUTHRIE: The brief of the International
21 Union of Mine, Mill and Smelter Workers, I think, you
22 have really covered the items there - emphysema and
23 bronchitis and I put questions on rheumatism and arthritis
24 which were the principal diseases that were specifically
25 referred to there. In the brief of the Ontario Federa-
26 tion of Labour which has not yet been read but will be
27 tomorrow, it is suggested that the Workmen's Compensation
28 Board should periodically update this list and add to
29 industrial diseases as compensable disablements become
30 known and become a factor in industry. Now we dealt with



1 that with Doctor Powell to some extent, this question of
2 updating. Have you anything more on that score?

3 DR. MASTROMATTEO: I think I have said
4 here there are so many chemical agents that it would be
5 very difficult. You raised the question that if something
6 is not scheduled then, by inference, it may not be covered.
7 I think that it would be a very difficult task to schedule
8 every occupational disease. There are books on industrial
9 diseases and there are literally thousands of diagnoses
10 made which could pertain to occupational disease. I think
11 the schedule is useful in a historical way in setting
12 down the well-known occupational diseases and this business
13 of presumption is an important one, but I think the
14 blanket coverage is of a sufficient latitude for people
15 with experience and the ability to investigate to render,
16 I think, valid opinions on the relationship between the
17 job and the healthy condition or normal condition or
18 unhealthy condition reported.

19 MR. GUTHRIE: The same brief goes on
20 to suggest in particular that the Board should recognize
21 such industrial handicaps as industrial deafness, ionizing
22 radiation, salmonella and others. Those are three. Now,
23 industrial deafness, we have not heard much about as yet.
24 We have some witnesses coming next week about it. Has
25 that been a matter of study by your branch?

26 DR. MASTROMATTEO: Yes, industrial
27 occupational noise has been under study by our branch.
28 We employ one engineer whose specialty function is to
29 assess noise exposure in occupations in Ontario. He has
30 specialized in this field and he is capable of making



1 very detailed investigations of noise levels, frequencies
2 of noise involved and to give opinions as to the risk to
3 the workers in these climates and quite often he is
4 called upon by the Board where a claim has been made for
5 occupational loss of hearing to carry out this investiga-
6 tion and his reports are made to the Board.

7 MR. GUTHRIE: Is there a high incidence
8 of industrial deafness? Is it a common claim nowadays?
9 Is it on the increase?

10 DR. MASTROMATTEO: I would say there is
11 not a high incidence, but I don't have any information
12 that it is on the increase apart from the general aware-
13 ness among people generally that this condition can be
14 related to noise at work.

15 MR. GUTHRIE: Do you know, Doctor, if
16 there is any regulation of the Department of Labour or
17 other Department which controls the level of sound in
18 a factory?

19 DR. MASTROMATTEO: There are no specific
20 regulations dealing with noise levels in industry or in
21 mining. However, there is, in my opinion, sufficient
22 coverage under the Industrial Safety Act and under the
23 Mining Act to deal with noise levels as they are found.

24 MR. GUTHRIE: Just under some broad
25 wording?

26 DR. MASTROMATTEO: Just broad coverage -
27 anything that may be detrimental to the health of the
28 worker. Some States, as you know, in the United States
29 have tried to specify limits for noise and for chemicals
30 in the air. This is something which we have stayed away



1 from in Ontario because, as has been pointed out, once
2 you start specifying in detail, then it gets to be an
3 illuminous piece of literature and it has to be amended
4 each year with numerous changes in chemicals and so on.

5 THE COMMISSIONER: You would have a little
6 difficulty then in prosecuting under one of the sections
7 you mentioned in either Act if you had not specified what
8 the noise level should be

9 DR. MASTROMATTEO: I am not aware of any
10 prosecution here. The difficulty may be where a high
11 noise level is encountered, then the recommendation would
12 be made to the Department, let us take the Department of
13 Labour, that workers in this area must wear hearing pro-
14 tection. In this case this is directed by the Department
15 of Labour and the employees in this particular hazardous
16 area would be compelled to wear hearing protection. So
17 it doesn't get to the question of noise levels per se,
18 because there are protective measures.

19 MR. GUTHRIE: About ionizing radiation,
20 Doctor, and I think there is sufficient coverage under
21 the Compensation Act as it now exists to deal with
22 ionized radiation, would you just explain what is
23 involved in that?

24 DR. MASTROMATTEO: The type of claim
25 which may arise?

26 MR. GUTHRIE: Yes, what is the disease?
27 That is ionizing radiation? What does it do?

28 DR. MASTROMATTEO: Ionizing radiation is
29 that form of radiation which we know more simply as x-rays,
30 radioactive isotopes. These materials are called ionizing



1 because one of their properties is to produce ionization.
2 These certainly have adverse health factors if persons
3 are exposed to excessive amounts of this kind of radiation
4 but the number of claims from this exposure in Ontario
5 are, fortunately, very low.

6 MR. GUTHRIE: Would they be included
7 under Item 9 of the Schedule, "Any disease due to exposure
8 to x-rays, radium or any other radioactive substances."

9 DR. MASTROMATTEO: In my opinion they
10 would be, yes. It is quite explicit to me.

11 MR. GUTHRIE: Do you know if the Board
12 would recognize that claim as such, or has?

13 DR. MASTROMATTEO: Oh yes, there have
14 been claims.

15 MR. GUTHRIE: As coming under that item?

16 DR. MASTROMATTEO: Yes, under that item,
17 yes.

18 THE COMMISSIONER: It would obviously
19 have some connection with x-rays, I think, not in connect-
20 ion with mining.

21 DR. MASTROMATTEO: These, to my knowledge,
22 have not occurred in mining.

23 THE COMMISSIONER: This does not refer -
24 "Radioactive substances". It would not come under any-
25 thing in connection with mines?

26 DR. MASTROMATTEO: I am sorry, Mr.
27 Commissioner, I meant that none of the claims of which I
28 was aware had arisen in miners.

29 THE COMMISSIONER: There have been sub-
30 stantial precautions in connection with all the mines



1 from their inception, I understand?

2 DR. MASTROMATTEO: Yes, there are pre-
3 cautions taken if you are referring to the uranium miners.

4 THE COMMISSIONER: As to levels?

5 DR. MASTROMATTEO: As to the levels of
6 radons in the atmosphere and, to my knowledge, there
7 has not been any damage from this source at all. The
8 kind of claim that might be reported would be excessive
9 exposure to x-ray machines or a gamma machine, this kind
10 of thing which would produce a superficial burn or perhaps
11 some loss of tissue. This has been accepted by the Board.

12 MR. GUTHRIE: With the presumption that
13 arises from Schedule 3?

14 DR. MASTROMATTEO: Yes, with the presump-
15 tion that arises.

16 MR. GUTHRIE: And salmonella, I notice
17 British Columbia includes salmonellosis in its schedule 3.
18 What is that?

19 DR. MASTROMATTEO: Salmonella is a
20 bacteria, a germ which can cause a gastro-intestinal
21 infection with diarrhoea and abdominal pain. It is
22 obtained either by a person's food or direct contact.

23 MR. GUTHRIE: It is commonly called
24 food poisoning?

25 DR. MASTROMATTEO: It is commonly called
26 food poisoning, correct. I don't see why it has to be
27 specifically listed. There is general provision to cover
28 it now. For example, tuberculosis is another disease
29 caused by a germ and there is sufficient coverage in The
30 Workmen's Compensation Act of Ontario to include tuber-



1 ...osis as an occupational disease. A nurse, for example,
2 who has to treat a patient with open tuberculosis may
3 contract it. One of my classmates died from tubercular
4 polio, the first one who died from it. In my opinion,
5 this is a classical occupational disease. He contracted
6 the disease from treating a patient and died about ten
7 days later himself with acute polio. This is a disease
8 which arose out of and in the course of his employment
9 as a physician.

10 MR. GUTHRIE: No coverage?

11 DR. MASTROMATTEO: At that time, no.

12 THE COMMISSIONER: Under what circumstances
13 is salmonella compensable? Is it a risk you run wherever
14 you eat? It could happen when food is not properly
15 handled?

16 DR. MASTROMATTEO: Yes, if you got it
17 in a restaurant it could not be related to the Workmen's
18 Compensation Act, but I think there is an implication
19 behind this question.

20 THE COMMISSIONER: I think the implication
21 behind it is, they feel that if they eat in an industry's
22 restaurant and they get some of these intestinal disorders
23 from it, that they should be entitled to compensation,
24 due to the fact that the industry provides the food
25 facilities. This is one that I don't follow exactly
26 or what has happened in British Columbia.

27 MR. GUTHRIE: Mr. Craigs can, perhaps,
28 help us with that tomorrow.

29 DR. MASTROMATTEO: There is another
30 point, if I may intrude on salmonellosis, some workers



1 become carriers of salmonella without clinical manifesta-
2 tion of the disease and because of this, if they are food
3 handlers and employed as such, they are no longer eligible
4 for this occupation while they are carriers, for obvious
5 reasons. They may infect the food and people eating it
6 become ill. Now, these people may be inhibited or pre-
7 vented from working because of this carrier state and
8 then the question of compensation comes up and I wonder
9 whether this is, perhaps, what is behind this.

10 DR. GUTHRIE: In reference to the British
11 Columbia section, the provisions are "from employment in
12 hospitals, sanitorium or clinic or branch of the Victorian
13 Order of Nurses or any office or establishment for the
14 practice of any healing arts," and so on. It is rather
15 like our tuberculosis.

16 DR. MASTROMATTEO: But the point does
17 come up in hospital; if you are a salmonella carrier you
18 won't be able to work in a hospital kitchen. You will
19 be paid your salary while you are not able to work. You
20 are not able to work, you are not clinically ill, you
21 do not have a disability.

22 MR. GUTHRIE: What would you do in a
23 case of that kind?

24 DR. MASTROMATTEO: I would like to raise
25 this question. I think it is a point that needs airing.
26 This does not only arise with salmonosis. It also arises,
27 for example, in lead exposure. We recognize that workers
28 exposed to that may show increased absorption without
29 clinical lead poisoning. This is a condition without
30 disability and this is determined by doing blood counts



1 and examination of the urine. However, based on
2 medical advice you would say that these workers should
3 be removed from exposure for a period because they are
4 showing increased absorption. In my opinion, they do
5 not have lead poisoning. However, the question may
6 arise, should compensation be paid for these people who
7 have to take reduced pay or perhaps even be laid off
8 from a small industry because no work is available. I
9 think this is a point which is frequently raised. It also
10 could occur with a radiation worker who has high
11 reading and is prevented from working with radiation.

12 Our present position is that these
13 people do not have an occupational disease. The reason
14 for removal from exposure is entirely prophylactic or
15 an attempt to prevent occupational disease and are such
16 legally they are not entitled to compensation.

17 MR. GUTHRIE: Have claims of that
18 nature been filed and refused, Doctor?

19 DR. MASTROMATTEO: Yes, they have, for
20 lead absorption in particular.

21 THE COMMISSIONER: Of course, that does
22 happen under different circumstances in connection with
23 the miner's certificate. The only thing is there it is
24 maybe not demonstrated that the tuberculosis, if that is
25 what it was, had anything to do with his occupation but,
26 again, he is denied the opportunity to continue in his
27 work.

28 DR. MASTROMATTEO: Yes, in the case of
29 a miner who develops tuberculosis, tuberculosis itself
30 may not have arisen from the occupation.



THE COMMISSIONER: In the ones you refer to, it can be traced to the occupation which was the cause of their being forbidden to continue. This can be traced to the occupation?

DR. MASTROMATTEO: That is right.

MR. GUINERIE: Doctor, in looking to the brief of the United Steelworkers the first point they make is with regard to, one, cancer. You may recall that in the report of Mr. Justice Beath in 1950 it was recommended that that be added to Schedule 3 where the workman is employed in a process by which he is subjected to the inhalation of dust, fumes, or gas. However, that was not implemented and the steelworkers believe that it now should be. Have you any different comment than you have had with relation to other things that are not in the Schedule but that the Board will apparently recognize?

DR. MASTROMATTEO: I would like to express simply personal opinions about lung cancer. Lung cancer, like heart disease, is one of these things that is multi-causal in its relationship. We really don't know, in essence, the cause of lung cancer. There may be genetic influences, there may be air pollution, maybe smoking influences, there may be air pollution influences and also there may be occupational influences. Therefore, for this reason, I am opposed to listing lung cancer as arising out of occupation with presumption. I think that the Board should wait until the Workmen's Compensation Act now to deal with individual claims for lung cancer as they are made and there are no facts.



1 criteria now established within the Board to deal with
2 lung cancer in certain specified occupations.

3 MR. GUTHRIE: Would you go so far as to
4 say that I could start smoking again?

5 DR. MASTROMATTEO: Yes.

6 MR. GUTHRIE: If I could just show you
7 that brief again, Doctor, and I believe I have a copy
8 here. That is the Steelworkers brief on page 25 and
9 there is quite a list of diseases which are described as
10 being compensable in other provinces but not specifically
11 covered in Ontario and I assume that means not listed in
12 Schedule 3. Are there any of those that have not already
13 been alluded to that you would like to discuss?

14 DR. MASTROMATTEO: Well, if we might
15 just take them one after another as they appear on page
16 25 - Occupational deafness is compensable in Ontario.
17 It may not be scheduled, but it is compensable. Asbestosis
18 is under Schedule 3 with the coverage for pneumoconiosis,
19 asthma respiratory irritations, I referred to in my
20 earlier remarks as respiratory diseases and these are
21 if a man is exposed to chlorine gas and develops acute
22 bronchitis he is compensated in Ontario with out the
23 necessity of scheduling this.

24 We could not again hope to list all the
25 acute gases that can cause acute bronchitis.

26 Bovine tuberculosis, tuberculosis
27 of any kind bovine or human is compensated in Ontario.

28 Undulant Fever is covered in Ontario
29 which is a potential hazard in packinghouse workers
30 and if the diagnosis is made by the practicing physician



1 there is no difficulty in securing compensation if he is
2 in Ontario.

3 Bronchitis and Pulmonary Oedema and
4 oxyacetylene welding; or electric arc for cutting, again
5 no difficulty in getting compensation in Ontario without
6 the necessity of having it schedule.

7 MR. GUTHRIE: You mentioned earlier the
8 need for research in some welding process and I just
9 missed it. Does this have anything to do with that,
10 Doctor?

11 DR. MASTROMATTEO: Yes, it is indirectly.
12 There are some statements in the literature that continued
13 occupation as a welder leads to pulmonary fibrosis. This
14 is the scarring of lung tissue and for this reason I think
15 this would be a priority area for research. This is a
16 controversial issue, it has not been settled, but I think
17 it is a valid area for research.

18 Circulatory disturbances of the extremities
19 again is covered in Ontario under blanket coverage. In
20 certain occupations where it is necessary for workers
21 to hold vibratory tools they develop a condition of their
22 circulation that they call white hand or dead fingers?
23 The doctor will call it Renaud's disease, of occupational
24 origin. There is no difficulty in securing compensation
25 for this in Ontario without the necessity of scheduling
26 it.

27 Conjunctivitis from whatever cause will
28 be covered.

29 Dermatitis is listed in Ontario. This
30 one, Formaldehyde poisoning, is one of the examples, I



1 think, which illustrates how hopeless it would get if we
2 tried to list every chemical - formaldehyde, phenol,
3 benzol, toluol, zylol - there are hundreds of thousands
4 of these chemicals and if we had to list poisoning by
5 each one of them the schedule would be hopelessly bogged
6 down and we would forget a few too.

7 Salmonella we have already touched on.

8 That is all on page 25 of the United
9 Steelworkers brief.

10 I am not a psychiatrist and certainly
11 could be slapped for this, but in one of the briefs it
12 dealt with neurosis. Diagnosis of neurosis is based
13 mostly on subjective findings and I think that each case
14 has to be dealt with on its own merits. I would, there-
15 fore, recommend against scheduling neurosis as an
16 occupational disease. I will not deny that some partic-
17 ular accident or some particular event will trigger
18 neurosis in a worker, perhaps from some pre-existing
19 condition. Certainly it would serve to trigger his
20 episode but I think each Board should be left free to
21 deal with each case on its individual merits, rather
22 than covering neurosis in a blanket way.

23 I think there is, perhaps, a word to
24 be said too about pre-existing and coincidental conditions.
25 There are many conditions which develop through age of
26 workers and non-workers which are aggravated by occupa-
27 tional exposure. For example, people who develop chronic
28 bronchitis through ordinary course of events are much
29 more likely to be bothered by any type of dust exposure
30 and I think the Board should be left free to decide in



1 individual cases that certain occupational exposures
2 aggravated pre-existing conditions. It is not necessary
3 to write in specific provisions for this kind of thing.
4 Coincidental conditions is another vexatious question.
5 People may have acute respiratory infections but because
6 they are handling a substance which is known in the shop
7 to cause bronchitis, it is difficult to say whether it
8 was caused by the chemical at work or not. I think here
9 again, medical judgment and investigation should be done
10 in the individual case to decide from the best available
11 opinion whether this is a coincidental affair or really
12 related to the job, and I think we all here agree that if
13 there is any doubt the worker always gets the benefit of
14 any doubt which may exist in this kind of investigation.

15 MR. GUTHRIE: Doctor, just to come back
16 for a minute to Caisson disease, can you be of assistance
17 to us on the question of whether a routine physical ex-
18 amination or even a fairly thorough one will enable you
19 to determine in advance whether or not a workman will be
20 susceptible to what is called Bends? How could a
21 physical examination help us in terms of a man about to
22 be subjected to pressure?

23 DR. MASTROMATTEO: Well, one of the
24 effects of going into increased atmospheric pressure is
25 that any air-containing sacs or parts of the body will
26 fluctuate in size as the pressure varies. I am sure we
27 have all experienced this on aircraft flights when the
28 pressure in the ear canal is released and the positive
29 gas increases. In fact, stewardesses have noticed their
30 uniforms filling out as they go higher because of the



1 gas that is trapped in the bowel. This is one of the
2 things that may arise in workers, so it is a good thing
3 to look at their eardrums to make sure beforehand that
4 they have intact eardrums. One of the effects might be
5 damage to the eardrum from this change in pressure in
6 the ear canal.

7 Another thing is high blood pressure.
8 We know that people with hypertension do not tolerate
9 the stress of being subjected to increase in pressure
10 and then returning to normal pressure, so it is wise
11 on a general basis - I can't give you numerical probabili-
12 ties in terms of percent of increased risk, but I can
13 say in a general way that people who have hypertension,
14 people who have ear disease and people who have obesity
15 and people who are in general poor physical condition
16 do not tolerate this physical stress as well as people
17 whom we would classify as being in good physical con-
18 dition.

19 MR. GUTHRIE: Would examination by x-ray
20 be of assistance in determining the fitness of a man for
21 work under pressure?

22 MR. MASTROMATTEO: Only so far as a
23 routine chest film would reveal whether he has chest
24 disease or not, including tuberculosis. The only other
25 advantage of doing pre-examination x-ray would be to
26 protect the employer, to make sure he has no bone disease.
27 I don't see any other special advantage other than a
28 routine chest film which would be a part of a good
29 physical examination.

30 THE COMMISSIONER: Doctor, does your



Nethercut & Young

1992

Toronto, Ontario

1 department have any supervision over this requirement
2 that there be a regular medical inspection of people
3 going into work under pressure?

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

29

30



1 DR. MASTROMATTEO: It would perhaps be
2 better to point out our responsibility in terms of our
3 duty. We do not enforce legislation under The Silicosis
4 Act in these regulations. In regard to occupational
5 exposure covered by the Department of Health and the
6 Safety Regulations in The Department of Mines, we are in
7 an advisory position. Now, in this case, workers in
8 increased atmospheric pressure, we have drawn up a data
9 sheet. The regulations are enforced by the Safety Branch
10 of the Department of Labour. They advise us of the
11 increased pressures to take place and we send the physician
12 two data sheets, one dealing with the type of physical
13 examination he should do and the other dealing with the
14 treatment of bends.

15 MR. GUTHRIE: This is to each project
16 where a physician will be required under the regulations?

17 DR. MASTROMATTEO: They are required in
18 all projects.

19 MR. GUTHRIE: So he receives a little
20 briefing from you?

21 DR. MASTROMATTEO: Yes.

22 MR. GUTHRIE: Do you brief them each
23 time or just once per physician?

24 DR. MASTROMATTEO: One per project
25 would be a better way to put it. Every time there is a
26 project involving atmospheric pressure, we are notified
27 through the Construction Safety Branch and we send this
28 out, which outlines the physical examination.

29 MR. GUTHRIE: Does your memorandum state
30 how long the examination should last, or is that left to



1 the physician? Does it depend how long it would take,
2 depending what you outline should be done?

3 DR. MASTROMATTEO: Yes, I think this
4 type of examination would take anywhere from 30 minutes
5 to 60 minutes. It is a good physical examination, similar
6 to that done for life insurance purchasers.

7 MR. GUTHRIE: You mentioned the ears,
8 blood pressure.

9 DR. MASTROMATTEO: I picked out hyper-
10 tension, the ears; and, of course, obvious things such
11 as psychological attitudes. Some people cannot stand
12 confined spaces, and if you can detect it in an examina-
13 tion you would exclude that type of person.

14 MR. GUTHRIE: Could you detect it by
15 conversation?

16 DR. MASTROMATTEO: It could be detected
17 by conversation.

18 THE COMMISSIONER: Do you know to what
19 extent the Act is being observed in the matter of having
20 physical examinations before people work under pressure
21 conditions? You were not here, but in the last few days
22 it has been said that they are put through in about 30
23 minutes on the medicals and it happens once every two
24 months. But you have no knowledge of this, I take it?

25 DR. MASTROMATTEO: I have no knowledge
26 of this, Mr. Commissioner. I would assume that the
27 physician who is making this examination assures himself
28 as to the criteria that he selects for suitability to the
29 work.

30 MR. GUTHRIE: At any rate, he is given



1 a guide?

2 DR. MASTROMATTEO: Yes, he is givan a
3 guide.

4 MR. GUTHRIE: That he ought to check
5 and he has to give his own certificate.

6 DR. MASTROMATTEO: Yes.

7 MR. GUTHRIE: He assumes a considerable
8 risk?

9 DR. MASTROMATTEO: I don't know about
10 assuming risk, but he tells these employees that they
11 should not work, if that is the case, in compressed air.

12 MR. GUTHRIE: There is the matter of the
13 Electrical Workers, I think we have dealt with the vasc-
14 ular disease, heart disease, and fatigue neurosis. I think
15 you spoke generally about neurosis, but we have a good
16 deal of evidence about so-called fatigue neurosis which
17 arises when the worker in a factory is doing a very
18 repetitive motion. Have you had any experience of that
19 in your branch? Have you done any studies on that?

20 DR. MASTROMATTEO: No, I have not con-
21 ducted studies dealing with emotional fatigue. I don't
22 know what the basis of their statement is, that people who
23 do this and develop neurosis should be compensated.

24 MR. GUTHRIE: They particularly cited
25 the person in Turin who was apparently otherwise in good
26 health and his job changed from more or less a manual
27 job to a mechanical job, a high-speed job, 14 single
28 acts on a machine in two seconds, which seemed quite
29 astonishing and after a period he broke down under that
30 strain and we learned that the Board would probably not



1 compensate in that case.

2 DR. MASTROMATTEO: I am not an expert in
3 that field, but I think repetitive work does not produce
4 neurosis. The neurosis lies in the roots of the person
5 involved, and physical work of this type would not, in,
6 my opinion, cause neurosis.

7 MR. GUTHRIE: It may contribute?

8 DR. MASTROMATTEO: I believe that the
9 roots of this condition are largely emotional. Certainly
10 if there is a severe physical effort, where a man was in
11 danger of his life, as some of them feel when they get
12 bronchial asthma, this could trigger emotional neurosis.
13 But to me, physical movements would not cause neurosis.

14 MR. GUTHRIE: We have had quite a lot
15 about the possible sequelae of Caisson disease and we
16 had Mr. Kennedy of the Mine; Mill Union talking about
17 the sequelae which might be caused elsewhere in the body.
18 He mentioned with regard to silicosis the kidneys, the
19 liver, the heart. Can you be of assistance in that
20 area?

21 DR. MASTROMATTEO: There is no associa-
22 tion of which I am aware involving kidney in silicosis.
23 There may be association - let's consider the heart as
24 to silicosis. It is more difficult for the heart to
25 pump the blood through the second scar tissue, and I
26 would certainly accept the heart, but not the kidneys.

27 MR. GUTHRIE: The liver?

28 DR. MASTROMATTEO: No, no association
29 between diseases of these organs and silicosis.

30 MR. GUTHRIE: This has been a very wide-



1 ranging discussion, Doctor, but very helpful to the
2 Commissioner. I have no further questions, unless the
3 Commissioner has.

4 THE COMMISSIONER: It has been said by
5 the brief of the United Steelworkers that your branch
6 is a consultative branch only and that you make investiga-
7 tions only if they are specifically referred to by an
8 employer or employee, the Department of Labour or someone
9 else, that the technical experts of your branch don't
10 go out (an inspector of the Department of Labour and
11 Mines) unless a problem has been raised. It says:

12 "The Branch undertakes no surveys on
13 its own initiative and does no research
14 work on the causes of industrial disease
15 or on the effect of various work con-
16 ditions on the health of employees. The
17 Branch does not provide the Workmen's
18 Compensation Board with copies of its
19 report and recommendations after one of
20 its investigations is completed. Neither
21 is a copy provided to the union," and
22 so on.

23 DR. MASTROMATTEO: I just said we do
24 provide copies to the Board.

25 THE COMMISSIONER: "The branch employs
26 only one engineer for the purpose to handle all in-
27 vestigation cases in all industries, into physical con-
28 ditions, such as noise levels, vibrations, non-ionizing
29 radiation, heat, etc., which may be hazardous to health.
30 Obviously such a limited staff could not do an adequate



1 job if the Branch took the initiative in making industrial
2 health surveys or in doing research into industrial
3 disease."

4 Then they go on to contrast British
5 Columbia, in which there is a quotation from Mr. Justice
6 Tysoe's Report of 1965, in which he indicates a very
7 wide investigation. Dr. Sutherland said you do conduct
8 investigations on your own, and I think you this morning
9 have indicated the same. Would you mind giving us your
10 statement regarding these allegations?

11 DR. MASTROMATTEO: I would be pleased to,
12 Mr. Commissioner. When the Industrial Hygiene Branch,
13 as it was then called, was started, the role of the
14 Branch was considered advisory to the Department of
15 Agriculture, to Mines, to Labour, and we would deal with
16 health questions referred to it by these other agencies
17 who have responsibility to us in these areas. However,
18 since the earliest years we always felt free to make in-
19 vestigations in our own right, and some of the investiga-
20 tions have been of quite significant importance. In fact,
21 Dr. Sutherland himself carried out quite a number of in-
22 vestigations and research on lung cancer in certain
23 occupations and succeeded in satisfying the Board that
24 there is an increase in certain occupations and was
25 indirectly, if not directly, responsible for getting
26 compensation for these people. It is not the kind of
27 research that people think of with rats and mice, but
28 it is epidemiological research.

29 I would like to apply myself to the
30 statement about one engineer. I was present at an inter-



1 view where perhaps this statement arose. We use that
2 statement to demonstrate the degree of sophistication in
3 Ontario. We had one engineer who specialized in noise
4 in Ontario, where the man in British Columbia does every-
5 thing including noise. But it was really meant to
6 indicate the degree of refinement, specialization in our
7 staff. We felt that the extent of the matter in Ontario
8 was such that we should put one man on noise. So I think
9 that indicates - excuse me - that we are miles ahead.

10 THE COMMISSIONER: You have inspectors
11 and engineers who are doing this particular work?

12 DR. MASTROMATTEO: Yes. I could, if it
13 would be of help, indicate the staff we have. We have
14 in the general industrial health field three physicians,
15 four engineers, three chemists, two librarians who
16 catalogue all of the medical literature, who literally
17 go over 150 medical journals a month, and this literature
18 is available to all who come to us, unions and government
19 officials. We have three nurses and technicians. Now,
20 in the occupational chest we have four physicians, and
21 these people are engaged in x-raying people for chest
22 conditions. There are seven technicians and two mobile
23 units, and we have a lab for occupational health. We
24 have a separate radiation lab. As far as ionizing
25 radiation is concerned, we have four physicians employed
26 and four more to be employed in this area.

27 I think because of the economic position
28 materially and the complexity of occupation pursuits here,
29 we have attained a degree of sophistication on our staff,
30 and this is what we need in team work.



Neithercut & Young

Toronto, Ontario

1 to get back to the business of the
2 United Steelworkers' brief, they quote some figures. Now,
3 the reason they were not in the annual Compensation Board
4 report is because they appear in the annual health report.
5 They quoted 225 field visits in British Columbia. In
6 1964, we did 525 in Ontario. They quoted 520 body-fluid
7 samples in British Columbia. In Ontario we did 12,000.
8 This includes things like blood films, enzyme examinations,
9 mercury, arsonic. We carried out 4,812 determinations of
10 radio active materials, and there were 32,500 x-rays of
11 persons employed in just occupations in one year.

12 I think just from those statistics
13 it may help to show the degree of work that is done in
14 Ontario in protecting the health of persons employed in
15 Ontario.

16 MR. GUTHRIE: What is the total staff
17 of your Branch?

18 DR. MASTROMATTEO: We have been under-
19 going re-organization. We have taken on added responsibil-
20 ity, water pollution and pesticide. It is 41 for the
21 occupational health service. The occupational health
22 and radiation lab would have a complement of about 28
23 people, and the chest unit a complement of about 16. In
24 the radiation field service, we have a complement of 7.

25 THE COMMISSIONER: You have in the
26 Department of Health also some further branch which deals
27 with air pollution or water pollution. You are not in-
28 cluding that in your figures

29 DR. MASTROMATTEO: No, I am not including
30 people engaged in water pollution, waste control or



1 pesticide control.

2 MR. GUTHRIE: What about dust surveys?
3 Are they carried out by the individual mines?

4 DR. MASTROMATTEO: The situation in the
5 mines in Ontario is unique. The Mines Accident Prevention
6 Association carries out routine samples. We have, on
7 occasion, carried out samples of our own for our own
8 satisfaction, and sometimes at the request of the Depart-
9 ment of Mines.

10 MR. GUTHRIE: Is there any report of the
11 Department or Branch which might be filed, a recent year?
12 [REDACTED] report I
13 have - I will give you 1964 and 1965.

14 ---EXHIBIT NO. 24: Report of Ontario Department of
15 [REDACTED]

16 [REDACTED] Department of
17 [REDACTED]

18 MR. GUTHRIE: The Branch doesn't use its
19 own report; it is included in the Department of Health
20 report?

21 [REDACTED]
22 MR. GUTHRIE: Mr. Commissioner, this
23 might be another case when we might entertain questions
24 from others present who might be interested in asking the
25 Doctor questions.

26 THE COMMISSIONER: Any questions? Thank
27 you, Doctor.

28 DR. MASTROMATTEO: Thank you, Mr.

29 Comm[REDACTED]

30 MR. GUTHRIE: Mr. Commissioner, at two



1 o'clock, we have Dr. Paterson to testify, followed by
2 the brief of the International Nickel Company on the
3 subject. I am not aware of any other brief scheduled
4 for today, and I would ask if there are any other persons
5 who wish to submit material at this time.

6 THE COMMISSIONER: Well, I regret the
7 fact that we have to break like this, because Counsel
8 and myself, as well as those of you who are present, don't
9 like waste of time any more than anyone else. But we do
10 have difficulty in getting people here at a particular
11 time. Dr. Paterson is one of the authorities on respira-
12 tory troubles and in consequence, we have to more or
13 less conform to what we are able to get.

14 Did you have something to say?

15 MR. SMITH: Yes, Mr. Commissioner. I
16 am the Chief Engineer of Mines for the Department of Mines.
17 I am here to answer any questions if they are so directed
18 to me, Mr. Commissioner.

19 THE COMMISSIONER: Well, if you will come
20 up here to the lectern. I am not sure if there are any
21 questions.

22 There was some discussion here and some
23 questions were asked regarding the effectiveness of the
24 dust surveys in the mines. I understand in the larger
25 mines there is somebody on it steadily, although he can't
26 be in every part of the mine at the same time. This was
27 information given to us. In the smaller mines, I am not
28 sure what the situation is there. It was Mr. Perry who
29 was giving us his evidence the other day.

30 MR. SMITH: Mr. Commissioner, in the



1 smaller mines, Red Lake, they hire a dust engineer who
2 does the work for the mines in the particular area. It is
3 also done in the Cobalt area, where there is a multitude
4 of small operations, involving 25 to 30 men; whereas
5 each individual mine, it would be too expensive for one
6 man to do it.

7 THE COMMISSIONER: I suppose he goes to
8 one mine today and another mine tomorrow?

9 MR. SMITH: Yes. Or he may spend more
10 time on a new mine which is getting set up, taking dust
11 analyses so that he can advise them on appropriate in-
12 stallations.

13 THE COMMISSIONER: How much control do
14 you have over that, if any, or have you any specifications
15 of dust limits or anything like that?

16 MR. SMITH: Yes. We rely on the Environ-
17 mental Health Branch guiding us in many of the hazards,
18 hazards which we do not understand ourselves or in which
19 we are not qualified. In any cases where any of the
20 engineers are working in the district feel they have a
21 problem, we immediately discuss it with the Environmental
22 Health Branch and they will send their representatives out
23 to meet our representatives in the particular district
24 who is an engineer and then samples will be taken and,
25 if necessary, corrective measures will be insisted on.

26 THE COMMISSIONER: It falls to you to
27 assist in this?

28 MR. SMITH: That is correct.

29 THE COMMISSIONER: And, on the advice
30 of the Environmental Health Branch?



1 MR. SMITH: That is correct. They advise
2 us of any dust problem. They may need more vent tubing
3 or larger exhaust fans. We see that this is done; this
4 is our responsibility.

5 MR. GUTHRIE: Mr. Smith, do these
6 problems arise as a result of an inspection by your
7 Department? Is that what brings it to your attention?

8 A: Yes, very much so.

9 Q: And at that point, you
10 ask the help of the people to come and assist you in
11 assessing the extent of the problem?

12 A: Yes. There are some of
13 these which have been going on in very large operations
14 in passing through. It may be a complaint of a union,
15 but we will ask the Environmental Health Branch to come
16 in and make a detailed survey. Now, this is one which
17 will extend several weeks in a particular
18 plant and then we will discuss it with
19 management, determine where it is deemed necessary,
20 and then there are follow-up actions.

21 Q: Do you realize, in the mining
22 industry, particularly in regard to smelting or refining,
23 new equipment, new processes are being developed daily -
24 let's not say daily - yearly. The larger companies in-
25 corporate these. Now, do they present a problem? This
26 is where, after new installation, where we may ask, "Let's
27 go in and have a survey of this particular area. What is
28 the hazard?"

29 A: Your inspectors, as such,
30 don't make dust surveys on a periodic basis?



1 MR. SMITH: No.

2 MR. GUTHRIE: That is left to the Mines
3 Accident Prevention Association?

4 MR. SMITH: That is correct. We have
5 all their reports. All their reports are sent in and
6 cross my desk. I do not issue these reports to the
7 District Engineers. The report is there at the mine; any
8 report is available to our Engineer. I want him to go
9 in and get the ventilation checked at that particular
10 mine and take appropriate action.

11 MR. GUTHRIE: On occasion, do reports
12 come to you from the Accident Prevention Association and
13 you take action?

14
15 MR. GUTHRIE: And you instruct your
16 district men to make an inspection?

17 MR. SMITH: Yes.

18 MR. GUTHRIE: Does prosecution follow
19 in these cases for hazardous dust conditions which are
20 not corrected?

21 MR. SMITH: No. What you are looking
22 for is proper ventilation. The mining industry of
23 Ontario - and I have been on inspection work for 26 years
24 if the results they get indicate that it is not too good,
25 in most cases they are working on it before our engineers
26 even get there. In the odd case, pressure must be brought
27 on the mine to get the work done.

28 MR. GUTHRIE: There hasn't been a case
29 where prosecution has been necessary?

30 MR. SMITH: No.



Nethercut & Young

Toronto, Ontario

1 MR. GUTHRIE: If prosecution did become
2 necessary, under what section or sections of your Act
3 would you have to proceed?

4 MR. SMITH: We could use the ventilation
5 section. This is on page 10.

6 MR. GUTHRIE: What is the number of the
7 section?

8 MR. SMITH: Section 10.

9 "The ventilation in every mine shall be
10 such that the air in all of its workings,
11 which are or are to be used by
12 persons, shall be free from
13 excessive amounts of noxious impurities
14 and shall contain sufficient oxygen to
15 preserve the health of anyone
16 employed in the mine."

17 And it goes on:

18 "In mine workings where such conditions
19 cannot be obtained by natural ventilation,
20 approved mechanical ventilation
21 shall be provided and kept in operation
22 until the conditions have been abandoned
23 or until satisfactory natural ventilation
24 is obtained about therein."



1 Now, in the non-compliance with this,
2 Section 624(1) at page 272:

3 "An owner, agent or other person who
4 contravenes any provision of part 9
5 is guilty of an offence and is liable
6 to a fine of not more than \$1,000.00."

7 THE COMMISSIONER: And this comes under
8 Part 9, does it, in Section 203?

9 MR. SMITH: Yes.

10 MR. GUTHRIE: Mr. Smith, we were a little
11 puzzled to know how the mines and your own department
12 would decide that there was a hazard. I am wondering if
13 there was any prescribed or accepted level of dust con-
14 centration that that gives rise to some action. How do
15 you know when to act?

16 MR. SMITH: They are governed by, here
17 again - I keep saying the Industrial Hygiene, the Environ-
18 mental Branch of the Department of Health. We are
19 using their figures. Now, when the reports come in you
20 study them. To set a specific figure is rather difficult.

21 MR. GUTHRIE: Do they set a figure for
22 different sets of mines and try to control them that way?

23 MR. SMITH: Oh, definitely. It depends
24 on the amount of free silica in the graphite or ore that
25 is being mined.

26 MR. GUTHRIE: Are these more or less
27 standards that they have laid down?

28 MR. SMITH: There is a formula. It is
29 250 divided by the percent of free silica plus 5 equals
30 the number of million particles per cubic foot. You use



1 this figure.

2 MR. GUTHRIE: And that figure is what,
3 a safe figure?

4 MR. SMITH: This figure, then, is the
5 figure that you should try to obtain dust counts below.

6 MR. GUTHRIE: So that you can't just
7 take a figure out of the air and say "This must be the
8 control figure everywhere"; it has got to be governed
9 by the degree of silica dust that is present in a partic-
10 ular rock or mine?

11 MR. SMITH: That is correct.

12 MR. GUTHRIE: Is that formula one that
13 is recognized in any way by regulation or legislation?

14 MR. GUTHRIE: It is the International
15 Conference of Industrial Hygienists which I think is
16 actually the source that I am quoting from.

17 MR. GUTHRIE: That is a United States-
18 centred body, is it?

19 MR. SMITH: I believe Dr. Mastromatteo
20 was a member of that organization.

21 MR. GUTHRIE: We heard some testimony
22 that their standards might be not entirely applicable
23 in Ontario because of a different testing method?

24 MR. SMITH: That is correct. We are
25 using a konimeter where they are using an impinger.

26 MR. GUTHRIE: Does it destroy the value
27 of their formula at all or is it still applicable?

28 MR. SMITH: If you are going to continue
29 this questioning in regard to methods of sampling, I
30 would really refer you to Mr. Yourt, who is present here,



1 and who is more familiar. I am not an authority.

2 MR. GUTHRIE: We did hear Mr. Yourt.
3 I did not intend to pursue it any further, but I was
4 really interested in knowing whether the so-called safe
5 level had any statutory recognition by regulation.

6 MR. SMITH: No, it has not, other than
7 our interpretation of the ventilation necessary in the
8 underground workings.

9 MR. GUTHRIE: Thank you, Mr. Smith.

10 THE COMMISSIONER: Thank you, Mr. Smith.
11 Are there any questions anyone else cares to ask while
12 Mr. Smith is here?

13 Thank you very much.

14 MR. GUTHRIE: Mr. Yourt, do you wish to
15 add something?

16 MR. YOURT: Mr. Commissioner, if I might
17 on this sampling, this formula that Mr. Smith mentioned,
18 was established many years ago in the granite quarry
19 industry in Vermont and, as I said yesterday, it is
20 based on impinger sampling of dust with light field
21 counting which counts down to .9 microns in diameter
22 and we count down to less than half a micron. So,
23 therefore, we see many more particles with our konimeter
24 than the impinger does.

25 Another difference is that the samples
26 we take with the konimeter, they are air samples, and
27 they impinge on a glass slide and these are closer to
28 silicious dust than the impinger is because we heat=
29 treat the sample to drive off all volatile materials,
30 then we acid-treat the sample to dissolve any solubles



1 such as carbonates, so that we end up with something very
2 much closer to silicate than the impinger samples so,
3 therefore, we should at least double the level in the
4 formula mentioned, but it is very difficult to say that
5 doubling would be correct because the number of fine
6 particles of arrestible size vary a great deal from
7 operation to operation and we have general indications on
8 that, for example, drilling - the dust produced by
9 drilling is usually finer than produced by handling broken
10 rock mechanically because there are more fine particles
11 because of the impact of the tool. So that we probably
12 have many particles around the size of half to three-
13 quarters of a micron which would be missed by the impinger
14 sampling. So that our method is much more restrictive
15 and proper.

16 As I said yesterday, we use that as
17 a general guide but that is open to question. The
18 Americans are not happy with it and there is research
19 going on all the time to establish a better method and
20 one of the methods that is being explored now by us
21 and the Americans and people in the United Kingdom and
22 in Europe is the gravimetric method in which you pull
23 air through a filter and you weigh a certain amount
24 over a period of a shift which has a certain advantage
25 over our spot samples. That is being pursued by us
26 and others and in that case you have to make certain
27 assumptions on rate because a sample with a predominance
28 of one micron particles would be much different in number
29 than half a micron by many, many factors. These, again,
30 must^{be}/guide lines. I would like to emphasize that point.



Nethercut & Young

Toronto, Ontario

2011

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30

THE COMMISSIONER: Thank you very much,

Mr. Yourt.

Well, we will adjourn until two o'clock.

---At 11.45 A.M., the hearing adjourned until 2:00 P.M.



1
2 ---At 2:10 P.M., the hearing resumed.

3
4 MR. ESTEY: Mr. Commissioner, on this
5 topic of medical treatment, the next person to come
6 before the Royal Commission is Dr. J.F. Paterson, Chief
7 of Medicine at Sunnybrook Hospital and Doctor of Medicine,
8 University of Toronto. Doctor, perhaps for the record,
9 you might be good enough to start off by describing your
10 medical training and your medical experience, if you
11 would?

12 DR. PATERSON: I graduated at Cambridge
13 University in 1936 and at St. Thomas Hospital in 1936.
14 I did graduate training in a research fellowship in
15 tuberculosis in the United States, I was in the Canadian
16 Army from October, 1939 to 1945. I was then in Kingston
17 in charge of medicine at the Veteran's Hospital, I
18 moved to Toronto where I joined the staff of the Chest
19 Clinic at Christie Street Hospital. In 1949, I was
20 taken on as an attending physician at the Toronto Western
21 Hospital where I remained, and I am still part-time and
22 I was appointed Chief of the Department of Medicine at
23 Sunnybrook Hospital on October 1st, that is when it
24 became a University Hospital.

25 MR. ESTEY: I understand, Doctor, that
26 your background includes some specialized work on
27 silicosis and a report which you made to The Workmen's
28 Compensation Board of Ontario. Can you tell me when
29 that was?

30 DR. PATERSON: That was in 1959. It



1 was not to the Workmen's Compensation Board, it was to
2 the Minister of Mines of Ontario. The Minister of Mines
3 and the Department of Mines asked for an independent con-
4 sultant to be appointed to review the programme of
5 silicosis in hard-rock miners in Ontario and I undertook
6 this work and it is published in a Department of Mines
7 pamphlet in 1959.

8 MR. ESTEY: In 1959 that was published?

9 DR. PATERSON: Yes.

10 MR. ESTEY: Can you now discuss in any
11 manner you wish to do so before the Royal Commission the
12 question, from an industrial viewpoint, silicosis and
13 emphysema, bronchitis and respiratory ailments with
14 which your practice involves you?

15 DR. PATERSON: My practice now?

16 MR. ESTEY: Yes, or your experience?

17 DR. PATERSON: I do only referred con-
18 sultations, that is only consultations referred by other
19 doctors of people who have respiratory disease. I have
20 no particular connection with the Workmen's Compensation
21 Board except that they refer me some cases to investigate
22 just as any other doctor.

23 MR. ESTEY: I was trying to say, Doctor,
24 we now know who you are and what your background in
25 medicine is. The Royal Commission is interested in all
26 matters pertaining to the administration of the present
27 statute, including this problem which is rather a complex
28 and difficult problem, of the rule of compensation in
29 those industrial diseases which relate to the respiratory
30 tract and the conditions which we laymen know a little



1 bit about under the name of silicosis, emphysema, bronchitis
2 and so on. I understood from your experience with such,
3 that you had information in connection with these con-
4 ditions and the relationship between those conditions
5 and compensation under the Act. I don't wish to confine
6 you to your knowledge of the Workmen's Compensation Board.

7 THE COMMISSIONER: I think it narrows
8 down to this, Doctor Paterson, can you tell us of any
9 cases of emphysema which develop subsequent to silicosis
10 or develop in a silicotic case that compensation is
11 allowed more or less as a presumption that it was due to
12 that trouble? The question that we seek some information
13 on is, what is the situation where a miner or somebody
14 is working in a mine or where dust conditions exist who
15 develops emphysema when he hasn't got silicosis? Has it
16 any relation to his occupation, not only emphysema alone,
17 but anything else of a similar nature where he might seek
18 compensation by reason of his employment when there is
19 no silicotic condition diagnosed?

20 DR. PATERSON: I think, perhaps, I
21 would like to take the conditions which are known to be
22 associated beyond all reasonable doubt. There is no
23 doubt whatever that silicosis is commoner in hard-rock
24 miners than it is in non-miners. That has been known
25 for I don't know how long. There is also no doubt that
26 tuberculosis is commoner in silicotics than it is in
27 miners who don't have silicosis or in the population who
28 don't mine. The problem that you bring up as far as I
29 know is unanswered, that is, that chronic bronchitis and
30 emphysema are fairly common conditions in men as they grow



1 older. They are related to the amount of cigarette smoke
2 that they inhale. Unless one takes a large group of
3 miners and a large group of non-miners of similar age
4 and similar cigarette smoking habits, I don't think that
5 one can say whether chronic bronchitis or emphysema are
6 commoner in miners than in non-miners.

7 Now, I may say to you there is no
8 evidence that it is any commoner and, therefore, they
9 are not related. The reason that there is no evidence
10 is possibly because nobody has looked for it. We have
11 looked and found the relationship between silicosis and
12 mining and between tuberculosis and silicosis, but I
13 doubt now if there has been any study made to investigate
14 the relationship of chronic bronchitis and emphysema
15 than mining without silicosis but, Mr. Commissioner, I
16 am sure you realize that I don't read everything.

17 THE COMMISSIONER: We were told this
18 morning that the branch of the Department of Health has
19 a very large library and carefully indexed and they have
20 two people there indexing the publications.

21 DR. PATERSON: I am awfully glad they
22 read it all. I wish I had time to do so too.

23 THE COMMISSIONER: Well, I think I
24 understand your answer but as far as the development prior
25 to silicosis being diagnosed is concerned, there simply
26 is no evidence one way or the other at the moment.

27 DR. PATERSON: That is right, yes.

28 THE COMMISSIONER: There have been no
29 studies made on this point?

30 DR. PATERSON: Not that I know of.



1 THE COMMISSIONER: So I suppose that
2 coming within that class would be the case where under
3 the Mining Act, the examining physician refuses to
4 recommend that a miner's licence be renewed if it is a
5 licence that he has by reason of the fact that he has
6 tuberculosis?

7 DR. PATERSON: Correct.

8 THE COMMISSIONER: That would be one of
9 these that has not been demonstrated that is necessarily
10 related to working in a mine?

11 DR. PATERSON: Which is that, sir?

12 THE COMMISSIONER: Maybe I am talking
13 too far. It was emphysema you were talking about. Would
14 the same thing be the case with regard to tuberculosis
15 where there had been no silicosis diagnosed?

16 DR. PATERSON: As far as I know, there
17 is no higher incidence in miners who do not have silicosis
18 that they should develop tuberculosis than in the corres-
19 ponding population, but there definitely is where the
20 miner already has silicosis.

21 THE COMMISSIONER: I understand if he
22 already has silicosis and develops tuberculosis, the
23 presumption is there and he gets his pension almost as
24 a right?

25 DR. PATERSON: That is right.

26 THE COMMISSIONER: But in these situa-
27 tions, either emphysema or tuberculosis, they appear
28 at a time when there is no evidence of silicotic condition
29 then there is nothing to necessarily relate them to the
30 miner's occupation?



1 DR. PATERSON: That is right.

2 MR. ESTEY: Doctor, so I can follow this
3 earlier part of what you said with reference to the
4 relationship between occupation and condition, do I
5 understand you to say that if the mining does not concern
6 a rock with silica or the presence of silica that the
7 mining does not necessarily have any link to the silicosis
8 or the silicosis incident is only noticeable, however,
9 if it is hard-rock mining in a field where silica is
10 present.

11 DR. PATERSON: Broadly speaking, the
12 likelihood of developing silicosis and the speed with
13 which it develops is due to the amount of silica
14 dioxide in the aerial dust. If you have extremely bad
15 conditions and rock with a low incidence of silica, the
16 man may then get it. If there is a high incidence of
17 silica and very good dust control, then they may still
18 not get it, but the danger is the content of silica in
19 the air the man breathes.

20 MR. ESTEY: To take it to an extreme,
21 would there be a higher incidence of silicosis amongst
22 coal miners than in the general population?

23 DR. PATERSON: That depends upon how
24 much silica there is in the non-coal dust in the coal
25 mine.

26 MR. ESTEY: I was trying to get something
27 that had no silica in it at all, but I guess it is
28 possible even in a coal mine, but if you did some kind
29 of mining where there was no silica at all, then I take
30 it that the incidence of silicosis amongst those miners



1 would be the same as the general population?

2 DR. PATERSON: Yes, that would be
3 confined to sniffing an abrasive cleanser in the kitchen
4 or something, but they would not get it in the mine.

5 MR. ESTEY: Yes, because this Schedule
6 3 now says opposite "Silicosis" - "Mining, coring,
7 cutting, grinding, or polishing stone." which, I take
8 it, would include limestone which has no silica in it
9 at all?

10 DR. PATERSON: If they are only dealing
11 with limestone they cannot get silicosis unless they get
12 tuberculosis?

13 MR. ESTEY: That is what I was trying
14 to get at. Then, having established the presence of
15 silicosis, do I understand you to say that after that
16 condition exists then there is a higher incidence amongst
17 that group of population than the general population with
18 regard to other conditions of the lung following? You
19 dealt with bronchitis and I take it there is no demon-
20 strated cause or link between the silicosis condition
21 and the susceptibility to bronchitis. Is there a demon-
22 strative link of higher incidence, or link between a
23 silicosis condition and tuberculosis?

24 DR. PATERSON: Definitely.

25 MR. ESTEY: Then is there any other con-
26 dition ==

27 THE COMMISSIONER: If I understood you,
28 Doctor, once a silicotic condition has developed you
29 accept that any tuberculosis that develops subsequently
30 or the Board does, is due to the employment, due to



1 working in the mine?

2 DR. PATERSON: Yes, if they have silicosis
3 they are much more likely to get it.

4 THE COMMISSIONER: But working in the
5 mine where silica conditions exist and he develops tuber-
6 culosis without having developed a silicotic condition,
7 you have also told me that under those circumstances you
8 have no evidence that the occupation stimulates tuber-
9 culosis?

10 DR. PATERSON: That is right. Needless
11 to say, Mr. Commissioner, if you have a population where
12 the incidence of tuberculosis is high and it happens
13 to be a mining population then, of course, the incidence
14 of tuberculosis will be higher in the miners than it is
15 in everybody but I don't think that tuberculosis is
16 caused really by mining unless the mining causes silicosis.

17 MR. ESTEY: Doctor, supposing the
18 mining, for the purpose of keeping this simple enough
19 for me to follow, causes silicosis as you have just said,
20 then is there also the causal link or probability link
21 that emphysema will follow more frequently in that case
22 than in the general population?

23 DR. PATERSON: Not that I know of.

24 MR. ESTEY: There is no link there?

25 DR. PATERSON: No.

26 MR. ESTEY: So that is on a par with
27 bronchitis?

28 DR. PATERSON: Yes.

29 MR. ESTEY: No demonstrable link between
30 that and the silicotic condition?



1 DR. PATERSON: Well --

2 THE COMMISSIONER: I understood if
3 emphysema develops subsequent to a silicotic condition
4 in the lungs that payment is automatic, or that there
5 is a presumption that it is due to the occupation?

6 DR. PATERSON: I think that is a reason=
7 able assumption. That is, you have a man who unquestion=
8 ably has silicosis. He has dust in his lungs which is
9 causing the deposition of scar tissues. This tends to
10 make him short of breath. Admittedly, a lot of people
11 may become short of breath with bronchitis and emphysema,
12 though they don't have silicosis, but the business of
13 sorting out just how much of this breathing difficulty
14 is due to the silicosis and how much is due to something
15 else is so difficult that I think - and I am open to
16 correction - I think the Board gives the man the benefit
17 of the doubt. And it is, therefore, compensated which
18 seems reasonable to me.

19 MR. ESTEY: Then, just pursuing the
20 same line of reasoning down the ladder of ailments or
21 up the ladder, once the silicotic condition is present
22 in the miner, is the incidence of ensuing lung cancer
23 higher or lower than the general population?

24 DR. PATERSON: There is no difference
25 as far as I know.

26 MR. ESTEY: There are no more probabilit=
27 ities in his case than in general population?

28 DR. PATERSON: No, and it is related to
29 smoking, rather than mining. This is in hard-rock miners.
30 There are other occupations where it is higher, of course,



1 but in hard-rock miners there is no evidence that it is
2 higher.

3 MR. ESTEY: Can you tell us something
4 about other occupations where the incidence is higher?

5 DR. PATERSON: This is like an oral
6 exam.

7 THE COMMISSIONER: Some of them are
8 referred to, I think --

9 DR. PATERSON: There was a retort man
10 in the gas works and I think that occupation has been
11 abolished a long time ago. Another one was a mining
12 and smelting company which was about 150 miles east of
13 here, that has been closed down. It is pathetic, I
14 ought to be able to read off 8 causes. In asbestos
15 workers, opinions are divided and some Boards accept
16 asbestosis as a causal link with cancer of the lung but
17 not silicosis.

18 MR. ESTEY: Those are the principal
19 occupations that occur to your mind in connection with
20 the higher incidence of lung cancer, I take it?

21 DR. PATERSON: Yes.

22 MR. ESTEY: I was just looking at some
23 of the other provinces on that point which you have just
24 raised.

25 DR. PATERSON: You have probably got
26 the answer to this question that you fire at me like an
27 oral exam.

28 MR. ESTEY: I am just looking at a
29 summation of all the statutes in Canada and they have
30 a list of ailments.



1 DR. PATERSON: If you list the occupa=
2 tions that might cause lung cancer, I will tell you right
3 now about them. That is an easy way of answering an
4 exam.

5 MR. ESTEY: It isn't that easy because
6 they are not listed under that name. This is designed
7 to cut the layman off. What I was looking for is respira=
8 tory ailments generally to see how the different provinces
9 handle them. We have in our province a respiratory
10 disease due to inhalation of materials and non-offset
11 pre=sprays in the printing industry. I take it that
12 that is an occupation that gives rise to lung conditions
13 or respiratory conditions of one kind or another = offset
14 sprays in the printing industry. That is a lithographic
15 process. Do you know anything about that?

16 DR. PATERSON: I have known that people
17 are sensitive to the stuff in offset spray and, for the
18 like of me, I can't remember what it is, but it may
19 cause asthma.

20 MR. ESTEY: In British Columbia they
21 get at it in a different way, they say pulmonary air
22 and respiratory irritation through exposure to vapours,
23 mist or dust.

24 DR. PATERSON: There are many irritants
25 in the atmosphere in industry which may cause irritation
26 to the bronchial mucosa and give somebody a bad time
27 with coughing and shortness of breath shortly after they
28 are exposed to it but nearly all of these clear up as
29 soon as the man is removed from the environment.
30



1 MR. ESTEY: I think, Doctor, that you
2 understand that in the line of enquiry we are trying to
3 launch, we are trying to get as much information as we
4 can as to the provisions, if any, we should have in
5 this statute and in Schedule 3 for ailments as described
6 in the attachment, but whether or not we have got in
7 the present grouping of cases conditions which are
8 presumed to have a link with occupations. That is
9 generally the problem: What occupations there are which
10 create medical hazards, and is the causal link sufficient
11 to warrant putting them into Schedule 3. In the various
12 provinces they have various ways of describing this,
13 and your specialty, being that of the respiratory tract
14 and the conditions you have described, leads me to ask
15 the general question as to whether or not there are
16 occupations which are known to have a high incidence or
17 higher than the general population incidence with respect
18 to respiratory conditions. We have dealt with them:
19 lung cancer, and so on. Are there any others which are
20 recognized as being somehow linked to occupations?

21 DR. PATERSON: Oh, gracious me, there
22 is a tremendous list.

23 THE COMMISSIONER: It was said there
24 were half a million compounds used in industry.

25 DR. PATERSON: Unless I saw the list
26 of all the noxious substances which are used in industry,
27 and unless I saw all the diseases associated with those,
28 I wouldn't know.

29 MR. ESTEY: We have had mentioned the
30 kidney, heart and lungs. Firefighting, I take it, it



1 doesn't take any medical training to know if you fight
2 fires every day --

3 DR. PATERSON: I think everyone knows
4 that a fireman can die from suffocation.

5 MR. ESTEY: Either quickly or slowly.
6 Well, perhaps you have answered the question. That is
7 generally what we are trying to get at, at the sense
8 of having these presumptions in present diseases listed.

9 DR. PATERSON: I think I would like to
10 say, and I think it is terribly important, that we might
11 know a number of irritants today and we may know without
12 reasonable doubt the causal connection, but the number
13 of new compounds which come into industry is tremendous,
14 as you know; and, of course, the regulations may be
15 right today and they may be wrong tomorrow. There are
16 two new diseases found recently. That is the bauxite
17 smelters' disease, which was unknown until 1944, I think
18 it was, and nephelitic lung which was discovered in
19 1957, 1958, something like that. I don't know what
20 kind of new diseases are going to be found next week.

21 MR. ESTEY: I started with silicotic
22 conditions and I went from there to upper lung conditions.
23 Is there any demonstrable link or higher incidence start-
24 ing from the silicotic condition?

25 DR. PATERSON: There is no doubt - the
26 last time I looked it up I think it was 20 percent of the
27 silicotics died of heart disease secondary to the lung
28 disease.

29 MR. ESTEY: Would that be a particular
30 kind of heart disease which would occur in these conditions



1 in the silicotic man?

2 DR. PATERSON: Yes. The problem with
3 the silicotic, of course, is tuberculosis, and by far
4 the commonest cause of death in the silicotics is
5 but certain groups of them don't die of tuberculosis
6 but of heart disease. It is known as pulmonary heart
7 disease, but there is no evidence that I know of that
8 silicosis predisposes coronary heart disease.

9 MR. ESTEY: What about kidney ailment?
10 Is there any connection?

11 DR. PATERSON: No.

12 MR. ESTEY: Any of the other organs?
13 Liver, and so on?

14 DR. PATERSON: No.

15 MR. ESTEY: We have covered the principal
16 ones known today anyway?

17 DR. PATERSON: Yes.

18 THE COMMISSIONER: There was filed with
19 the Commission the chart which showed the principal
20 causes of death in silicotics between 1926 and 1964,
21 and it also showed how many of them represented cases
22 in which compensation was paid. In the last period
23 a very substantial number who died from heart conditions
24 were compensated. As I gathered from the evidence we
25 heard yesterday, if it is a right heart condition, a
26 right side heart condition, then it is considered that
27 it is clearly a sequelae.

28 DR. PATERSON: Yes.

29 THE COMMISSIONER: It also shows other
30 heart conditions apparently in which no compensation was



1 paid. That is the left side of the heart; they don't
2 consider there is a connection.

3 DR. PATERSON: Yes.

4 THE COMMISSIONER: The 20 percent you
5 mentioned that died ---

6 DR. PATERSON: I am not sure of the 20
7 percent.

8 THE COMMISSIONER: A substantial number
9 of them did receive compensation?

10 DR. PATERSON: Yes. My memory of the
11 20 percent, I am afraid, is based on a memory of something
12 I read six years ago, seven years ago.

13 THE COMMISSIONER: Any further questions,
14 Mr. Estey?

15 MR. ESTEY: No, I haven't.

16 THE COMMISSIONER: While Dr. Paterson
17 is here, have you any questions, Mr. Thibault?

18 MR. HALL: I was going to ask, Mr.
19 Commissioner, Dr. Paterson if, in relation to the fact
20 that he stated that it could not be shown that emphysema
21 among miners compared with the general public because
22 there had not been studies done. In his opinion, in
23 relation to his work such a study should receive priority
24 by the people who are responsible for this type of work.

25 DR. PATERSON: I think it would be
26 fascinating, but I don't know who you would get to do it,
27 or under what conditions it could be done. I have thought
28 of this myself years ago, how extremely interesting it
29 would be to do so-called field surveys. When I said it
30 could not be shown, I meant I didn't know if it had been



1 done. It would be fascinating, but I don't know who
2 would do them.

3 MR. HALL: I recall seeing a study
4 done by a Dr. Howess in Cardiff Hospital, who had
5 examined all of the rejected claims in Great Britian
6 that had gone from the various areas, and as part of his
7 recommendations to the National Union of Mine Workers in
8 Great Britain it concluded that emphysema and bronchitis
9 were higher among coal miners than in the general public,
10 and higher in South Wales than in other parts of the
11 country.

12 DR. PATERSON: It might be so here, it
13 might not.

14 MR. ESTEY: Looking over our Schedule 3,
15 the list of diseases which carry presumption as far as
16 compensation benefits are concerned, there is listed
17 compressed air illness or caisson disease. I wonder
18 if you could tell us if there is any connection between
19 that condition and subsequent lung conditions or heart
20 conditions?

21 DR. PATERSON: Not that I know of.

22 MR. ESTEY: Not that you know of?

23 DR. PATERSON: No.

24 THE COMMISSIONER: Dr. Schepers did
25 some sort of research. Are you acquainted with that?

26 DR. PATERSON: I am acquainted, but I
27 am not in a position to say whether it was right or
28 wrong because I have not read it for years, but I know
29 of it.

30 THE COMMISSIONER: It was not the type



1 of study which you suggest would be the only thing that
2 would give a definite result. I gather from the evidence
3 yesterday that it was a certain number of tests done with
4 animals by inoculation by which he sought to achieve
5 certain conditions from which he drew certain conclusions.
6 But you don't recall it?

7 DR. PATERSON: I don't recall it in
8 detail, no.

9 THE COMMISSIONER: Thank you.

10 DR. PATERSON: Thank you very much, Mr.
11 Commissioner.

12 MR. ESTEY: Mr. Commissioner, I think
13 the International Nickel Company now have a submission
14 on this topic.

15 MR. OSLER: Mr. Commissioner, I would
16 like this afternoon, if I could, to deal with one part
17 of the matters that are being dealt with this week and
18 which is dealt with in our brief, and that is pre-exist-
19 ing conditions. I also have been able to obtain some
20 material which I undertook to obtain at one of the
21 earlier presentations.

22 THE COMMISSIONER: Were you here yester-
23 day?

24 MR. OSLER: I wasn't, sir, no.

25 THE COMMISSIONER: The evidence yesterday
26 on pre-existing conditions, if I state it correctly,
27 was, one, in the case of an eye, one man who has already
28 lost an eye and he subsequently loses the other eye.
29 That is one of the cases that the Board treats as 100
30 percent liability. When I say that, I mean 100 percent



1 of 75 percent. There is the case which Mr. Justice
2 Roach cited in his report a number of years ago, a man
3 who had diabetes and he dropped a stone on his foot and,
4 as a consequence, he lost a leg. In that case, they
5 accept 100 percent liability. That is a change from
6 the time of the report.

7 There is one other case, and that is
8 where in a pre-existing back condition they are unable
9 to establish its degree, it is doubtful --in those cases
10 where they award 100 percent and deduct 50 percent out
11 of the second injury fund. As I see it, in all other cases
12 there is a deduction for pre-existing condition; in other
13 words, where pre-existing incapacity can be made clear.
14 If there was one finger off, the first finger of the left
15 hand, and then he lost his first finger of the right hand,
16 then 4 percent is the allowance, the total would be 4
17 percent plus 4 percent, and then they allow an extra 2
18 percent for extenuation, or whatever they call it. So
19 his total percentage would be 10 percent, but all he
20 would be allowed would be 6 percent. So it is where a
21 pre-existing loss can be clearly demonstrated. I don't
22 know if that alters the picture of what you have in mind
23 as to what the practice of the Board is, but that is
24 the evidence that was given yesterday by the Board
25 officials.

26 MR. OSLER: What is the actual practice?

27 THE COMMISSIONER: Yes, as to practice.
28 I think it just a rule of thumb. A change was made in
29 1964 where, instead of deducting the 50 percent in the
30 case of diabetes, they now allow 100 percent.



1 MR. OSLER: On the basis of the legal

2 view, the cause, the immediate cause....

3 THE COMMISSIONER: Yes.

4 MR. OSLER: I was trying to deal with
5 this, and this is a very difficult subject, when we get
6 to our back cases particularly. We talk about pre-
7 existing conditions. I think in Mr. Justice Tysoe's
8 Commission he set that out quite fully. He differentiated
9 between a pre-existing disability as such, and a pre-
10 existing condition. A pre-existing disability, such
11 as the lack of a finger or amputated foot, obviously
12 there is already a pre-existing disability at the time
13 of the subsequent accident. But then you get - and I
14 think this is the area of most concern - a pre-existing
15 condition which at any given time perhaps shows no dis-
16 ability but is going to show disability regardless of
17 whether it is an accident or not.

18 THE COMMISSIONER: High blood pressure,
19 perhaps something wrong with the heart.

20 MR. OSLER: It is going to occur, it
21 is bound to occur whether there is an accident or not,
22 and at the time of the accident it does not come on and
23 it progresses to the stage where there is a disability.
24 This, I believe, is the area where I think the Board
25 would be inclined to consider it totally accident-caused,
26 even though it has only been accelerated by the accident
27 in point of time.

28 THE COMMISSIONER: They seem to insist
29 on something happening, even though it isn't a very
30 severe happening, before they accept this disability.



1 MR. OSLER: Yes. The something happen=
2 ing, of course, work caused, I think it has certainly
3 been established in case of law, if you review it, and
4 certainly in the Theed case where just the carrying on
5 of an activity was found to be an accident, even though
6 there wasn't a specific point of time where the complain=
7 ant said, "Oh, my back" - I think in that type of case
8 it has got to be borne in mind that the court there was
9 dealing strictly with whether an accident had occurred
10 or not. The arbitrator in this instance had already
11 found there was, in fact, a causal connection between
12 this fact and the use of the arm on this machine. This
13 is an area, I think, where most difficulty occurs, really
14 establishing the causal connection. I think in the
15 Theed case that there can be no doubt that the injury
16 to her back was caused by that and nothing else. You
17 take the various cases referred to in that case, from
18 what you can gather from the facts - of course, each of
19 these is a matter of appeal on the facts. He over=
20 exerted himself, attempted to lift a weight. This kind
21 of thing occurs often in these cases. These cases are
22 fine, they would be a principle when a continuing work
23 can result in there being an accident; but I maintain
24 that there must be a very definite causal connection
25 between the injury and the work as distinct from the
26 injury and any other activity that the individual may
27 be carrying on.

28 To deal with the degenerative disc
29 situation - this is subject to correction from the
30 medical people - in my discussion with Dr. Hazelwood,



1 he agrees with me. I can, leading a desk life, suffer
2 from a slipped disc or a disc trouble, or a problem that
3 is utterly unconnected with my work. There is no heavy
4 work, no twisting, no turning, no reaching, no stretching
5 or anything else; and yet it appears when you get men
6 who are engaged in a manual occupation we link it to say
7 the injury to the back is caused by the work, even though
8 he has a degenerative disc condition which is going to
9 come on.

10 I am given to understand by Dr.
11 Hazelwood, in fact, not only on this occasion, but on
12 all other occasions, dealing with back problems, that
13 you can have men with a congenital back condition which,
14 in the course of time, will in all probability result
15 in that individual having some form of back problem,
16 probably between the thirties and forties. Whether he
17 is going to do manual labour or not, it is a thing that -

18 THE COMMISSIONER: What kind of a
19 congenital condition?

20 MR. OSLER: Perhaps I can ask Dr.
21 Hazelwood.

22 THE COMMISSIONER: I judge the word
23 "Congenital" means it has been there from birth?

24 DR. HAZELWOOD: Yes, it is a condition
25 in the low back in which one of the vertebrae has slipped
26 forward, and it is due to a failure of the development
27 of the arch of the vertebrae and it may exist without
28 any symptoms for many years. We find the symptoms may
29 occur in the middle thirties, the onset, and when a
30 person has a disc condition which is pre-existing, it



1 is present, then he may have an accident which triggers
2 this and he has a pain in the back and he finds out.
3 Now, is that due to this congenital condition which he
4 had for thirty-five years, or is it due to injury?

5 MR. OSLER: Dr. Hazelwood, perhaps you
6 would give your qualifications.

7 DR. HAZELWOOD: I am a graduate of the
8 University of Toronto, with four years post-graduate work
9 at the Toronto General and the Hospital for Sick Children
10 in surgery, especially advising in orthopedic surgery.
11 I am certified by the Royal College of Surgeons in Canada,
12 and I am Chief Surgeon with the International Nickel
13 Company and I have been with them for thirty-six years,
14 except for a period of three years when I was in the
15 Air Force.

16 MR. OSLER: Thank you. I gather in
17 the course of discussions before you, sir, that with
18 degenerative conditions of the spine there is, in fact,
19 a progression of the degeneration as the man grows older.
20 Depending on the condition at the start, trouble will
21 eventually come, and it is in this type of area that
22 it is not really correct to apply what is called the
23 thin-skull case, because the thin-skull case, if you
24 look at it, is related to the damages which the wrong-
25 doer will pay. A man with a thin skull, never having
26 an accident, is never going to have a problem, but here
27 we have a situation in the back conditions, both congen-
28 ital and degenerative, where at some point of time this
29 is going to happen. He bends down to tie his shoe laces,
30 or he bends down to pick up a wrench; it happens at the



1 point of time at which he feels that pain.

2 THE COMMISSIONER: The thin skull law,
3 if we may call it that, is to be taken as a good law. I
4 think this case, such as an aneurism, would come within
5 it. I think it is there; it may occur. It may occur
6 in the course of time by reason of a defect. It occurs
7 by reason of exertion of some kind or another; a blood
8 vessel breaks, something triggers it. I think there are
9 a lot of other cases where the thin skull rule shouldn't
10 apply. One, because it is difficult to decide what was
11 there before, they allow 100 percent, but that might not
12 be a thin skull case at all.

13 MR. OSLER: I think I see your point,
14 sir. As far as these other situations are concerned, after
15 all, we are all going to die sometime. However, the field
16 we are concerned with is this field of a person of relat-
17 ively younger age where a condition exists which is
18 perhaps going to bring on a back condition, there are
19 many people who suffer from these conditions and age has
20 no relation to their work; it just comes on in relatively
21 early life. Those are the ones I feel where some
22 recognition must be given to this pre-existing condition.

23 THE COMMISSIONER: Well, they certainly
24 don't seem to turn very many down.

25 MR. OSLER: That is true. Dr. Swanson
26 made very definitely the point of this degenerative disc
27 condition having^a direct relation to aging, it is a thing
28 which is progressing all the time. Perhaps that is a good
29 way to approach it, that it is progressing towards dis-
30 ability from the time it starts.



1 I think we have discussed that. I think
2 consideration should be given to that particular phase.

3 THE COMMISSIONER: I don't know where
4 this leads. Have you any specific suggestion?

5 MR. OSLER: This is the area of greatest
6 concern from my own point of view. I have come to the
7 conclusion that even if I could persuade you to change
8 the definition of "Accident", for instance, perhaps to
9 delete the earlier amendment, I don't think it is
10 necessarily the answer. I believe that, despite the
11 figures produced by the Board that there has been a
12 change in dealing with these back cases since the change
13 in definition of the Act and I believe that we have not
14 seen the impact of it. I was going to file with you in
15 a moment some statistics that I wanted to produce for
16 you to support our earlier statement in that section
17 dealing with the definition of "Accident".

18 I don't know, I don't like to cast a
19 stone at the Board that we think they are perhaps
20 bearing on the side of accepting too quickly a causal
21 connection between the disability and the work.

22 THE COMMISSIONER: I think the Board says
23 that they give them any benefit of the doubt and that is
24 quite proper. That is quite a different thing from saying
25 that in almost every case the previous injury is to be
26 taken into consideration.

27 MR. OSLER: On that causal connection
28 end, I have referred to a number of cases which we had
29 merely to illustrate a point. I am not looking for them
30 to be re-examined or re-opened, of course, but in those



1 cases it struck us that the Board were applying a causal
2 connection which appeared to us to be a great stretch
3 of the imagination to, for instance, say that the man
4 in merely lifting up a wrench claims that he injured
5 his back and on that basis compensation was paid to him.
6 A causal connection where it shows a man is performing
7 a function in which he is over-exerting himself, that
8 type of thing, yes, there is a causal connection between
9 the over-exertion and the disability but, as you might
10 say, "Oh, the back".

11 THE COMMISSIONER: As far as you can go,
12 I suppose, is to ask for a recommendation that the Board
13 be a little more critical of the evidence that is before
14 them.

15 MR. OSLER: I think so. I know there
16 has been a question; the union's position has been why
17 should the man always have to have a witness who sees
18 the accident. I don't think that is a test, whether it is
19 necessary to have a witness to the accident or not.
20 Certainly I can imagine any number of instances where
21 a man could really properly be injured, correctly injured,
22 with no witnesses. If you want to take it on the other
23 basis, I should think it would be only too easy to
24 manufacture a witness. I injure my back and turn
25 around and say, "Oh, Joe, I just hurt my back". It is
26 just as easy to obtain witnesses in substantiation of an
27 injury, so I don't think the production of a witness
28 or the lack of witnesses is necessarily an answer but
29 I do think - certainly our experience has been that the
30 number of back claims which have been allowed and are



1 receiving compensation are very much out of line.

2 In that connection, sir, I, perhaps,
3 would like to file with you, if I could (I have given
4 copies to Counsel) two papers. That is a table of non-
5 traumatic back cases and the other is the question of
6 incidence of back injury to age.

7 Dealing with the table on the Non-Traumatic
8 Back Cases, I have merely taken the most recent years,
9 that is, 1961, 1962, 1964 and 1965.

10 THE COMMISSIONER: These are non-traumatic
11 back cases. There was no demonstrable injury?

12 MR. OSLER: There was no striking injury
13 to the body, they are just a twist and sprain case.

14 THE COMMISSIONER: Where did you get
15 these, who are these people?

16 MR. OSLER: May I just explain this?

17 MR. ESTEY: What number will these have,
18 Mr. Johnston?

19 THE SECRETARY: 26 and 27.

20
21 --EXHIBIT NO. 26: Table of Non-Traumatic Back Cases
22 of International Nickel Company.

23 --EXHIBIT NO. 27: Table of Incidence of Back Injury
24 to Age of the International Nickel
25 Company.

26 MR. OSLER: The first column, of course,
27 is clear, being the year. The next column is the number
28 of employees at December 31. This is obtained, of course,
29 from our own employment records as to the number of
30 employees in the employment of the company at the end of



1 the year, which is contained in a statistical report
2 which is prepared. You will note in this connection
3 that there is a variation between this figure of, for
4 instance, in 1965, of 15,785 men from that quoted in
5 our brief earlier on page 22 where, in making that state=
6 ment in the brief, we took the average working force
7 throughout the year. There is a small variation in the
8 numbers.

9 Now the total claims = under that column.

10 THE COMMISSIONER: Well, this is taken
11 from your own records of the work force?

12 MR. OSLER: Yes.

13 THE COMMISSIONER: Where are these non=
14 traumatic back cases taken from?

15 MR. OSLER: May I now just get to that?

16 THE COMMISSIONER: Yes.

17 MR. OSLER: That is why there has been
18 some delay in getting this information. Of all the
19 claims made, reported accidents to the Workmen's Com=
20 pensation Board, these have all been reviewed for each
21 of these years. All those which relate to a claim with
22 respect to a back injury have been segregated and counted
23 which gives us the number of 266 in the year 1961. That
24 is, every claim in which there has been a claim for
25 compensation made in respect of back cases taken from
26 the company's file which is maintained in respect of each
27 accident which occurs and is reported. They are all
28 listed on charts.

29 We have actually gone to the extent of
30 listing, to make this calculation, every claim number



1 and the name of the employee involved, determined whether
2 he has received any compensation or not to the extent
3 we can - I will come to that in a minute, those whose
4 claims for compensation were rejected, some of
5 them received medical aid because I understand the Board
6 does make a payment to a doctor if they use his initial
7 report for the purpose of adjudicating the claim. Those
8 have been segregated, of course, farther over in the
9 tabulation.

10 Now, the column "Total Paid", that
11 represents the total number of employees in these par-
12 ticular back cases of the 266 where we have received
13 notice or other advice from the Board that a payment of
14 compensation as such has been paid. This does not
15 include those cases where just a medical aid payment has
16 been made but the claim has been rejected.

17 The next column or the one (c) is a
18 double column and this is the total of the claims rejected
19 but it has been split into two, one in which no medical
20 aid was paid and one where this initial payment to
21 doctors was made. Normally, these amounts were relatively
22 insignificant - \$4.00, \$5.00, \$10.00, something like that.
23 It would be less than \$10.00.

24 The next column (d) are those cases in
25 which we have no record either of a claim having been
26 accepted or rejected. I can't advise the Commission the
27 reason why we don't know. Certainly, our files do not
28 disclose any notification that payment has been made in
29 these cases or whether the claim has been rejected.

30 For the purposes of our percentage in



1 the final column, we have included these unknown decisions
2 as if they had been rejected. In regard to 1964 and 1965,
3 we suspect that a certain number of these rather high
4 number of claims of which we have no knowledge of decision
5 are perhaps ones which are perhaps pending for decision
6 by the Board and may well become paid claims, but they
7 have not been included in the tables.

8 In the right-hand column, of course, you
9 see the percentage of the rejected and unknown claims
10 to the total claims filed and the substantial decrease in
11 percentage from 1961 to 1965 of rejected claims. This
12 is notwithstanding the fact that in 1964 and 1965 we
13 have those 31 not known decisions and 29 unknown decisions.

14 Of course, if you look at column (a) you
15 go from 1961 with 266 total claims made to 1965 with 556
16 being the total claims made. This is still just back
17 cases. Then we have no information for 1966 but it
18 is interesting to see that in 1966, despite the interr-
19 uptions in the work during the summer months to September
20 15th this year, we have got 448 with another 3-1/2 months
21 to go, so that the expectation is that by 1966, we are
22 going to be again considerably above 1965. You cannot
23 help, sir, in looking at those figures wonder as to why.
24 Now, suggestions have been made as to the various reasons
25 for the increase in back cases. Exception was taken to
26 our statement when dealing with this originally that there
27 had been a reduction in the physical effort required and
28 I do feel that we have got to make a correction in some
29 impression left with the Board. For that purpose, sir,
30 I want to file with you some photographs, if I may.



1 ---EXHIBIT NO. 28: 4 Photographs, A, B, C, and D.

2
3 Sir, picture No. 28(A) is the drill that
4 was referred to as the leyner drill. You will note
5 that drill is massive in size as appear in pictures
6 (B), (C) and (D). That is the drill itself. You will
7 notice that drill is resting on or fixed to a horizontal
8 arm and that horizontal arm is itself fixed to a vertical
9 column at the bottom of which you will see there is
10 provision for a jack leg to expand it and jam it against
11 a timber at the roof and a timber on the floor. That
12 is the leyner drill, the one where the drill itself
13 weighs some 225 pounds, I think.

14 That is the drill itself. Now, that
15 drill having been established in one position can drill
16 one hole. Having drilled that hole, the machine must
17 be slid along the horizontal bar, the nuts loosened and
18 slid along the horizontal bar to get to the position of
19 the next hole and then tightened up and the next hole
20 drilled. When you have drilled the holes you have to on
21 that horizontal, you then have to raise and lower that
22 whole arm plus the drill on the vertical column. You
23 start drilling as if you were drilling into the end of
24 this room. You have got to have the drillholes spaced
25 in accordance with the conditions of the ground, but,
26 by and large, you are going to have drillholes across
27 that whole face, scattered across that face. If the
28 area in which you are drilling is wider than I think
29 it is about what they call two sets, which is about
30 14 feet wide then, of course, you have to take the whole



1 machine down, move it, set it up again, and then go
2 through the same process. When you finish drilling, of
3 course, that machine has to be dismantled, the drill
4 taken off, taken to the back of the working area, the
5 pillar has to be taken down - that is a solid steel
6 pillar, taken to the back prior to loading, blasting
7 and so on and then slushing out.

8 In comparison with that, pictures (B)
9 (C) and (D) show you what is called a jack leg. Now,
10 that drill is about 70-1/2 pounds. It is fixed on to
11 a leg which goes down at an angle. That leg is geo=
12 matic itself in that by air it extends. There is no doubt
13 that when you collar the hole, which is the expression,
14 that is the first bite of the bit in until you get your
15 hole started, the employee must hold that drill, but he
16 has the assistance of the jack leg, the pneumatic jack
17 leg holding the weight of the drill up but he must hold
18 it so that it actually spuds in, you might say. He is
19 not bearing the whole weight of that drill of 70-1/2
20 pounds on his arms as he commences to drill.

21 (B) and (C) will show that there are a
22 great series of holes there. I must explain that those
23 pictures were taken of experimental work being done as
24 to rate of drilling and in testing these drill steels
25 out. You would not find as great a number of holes in
26 a normal area which is being mined. That was merely
27 testing but they are good pictures of the jack leg machine
28 itself. The large hose you see attached in each case is
29 the air hose which drives the machine, also drives the
30 hydraulic movement of the legs so as the drilling con-



1 tinues through after collaring in, the leg continues to
2 extend and the drill goes in by itself. There is no
3 strain or pressure compared with the other type of work
4 in there. Then the small hose, of course, is a water
5 feed so that there is a constant feed of water while
6 in the process of drilling to make sure there
7 is no dust. From that point, sir, I think it would
8 clearly illustrate the matter of the heavy drill. The
9 old drill was very heavy although it did have a stand.
10 The physical exertion required to handle that drill,
11 move it up and down its standard is considerably greater
12 than that required on the new jack leg drill.

13 The statement was also made, again in
14 this reference, and I refer you, sir, to Exhibit No. 27.
15 In filing this table, sir, it is headed "Incidence of
16 Back Injury to Age". The statement was made that in one
17 instance that it is the older men whose backs are giving
18 out because of this arduous work over the course of years
19 and that it is this mining work over these years which
20 has destroyed their backs and in another case, the
21 reference was that the height of back cases would
22 start in the ages of 33, 35 and from there upwards. Our
23 experience has been to the contrary. As you will see
24 from this table, again for the same four years, you
25 will notice we have split the number of back cases as
26 between those occurring between the ages 18 and 30 on
27 the one hand and, on the other, those over the age of 30.
28 We have also indicated the number of employees and, for
29 this purpose, we have restricted this to the mining and
30 smelting division; in other words, we have removed the



1 copper refining and, of course, the clerical type of
2 work out of this so that we are looking at strictly a
3 mining and smelting position which is, I think, generally
4 recognized as the area of the heaviest labour.

5 As you can see through this incidence
6 whereas the working force in 1961 between the ages of
7 18 and 30 was a little under half of that, a good deal
8 under half of the number of employees over age 30, the
9 percentage of back cases in the younger group was almost
10 double that of the older group. Now, that same picture
11 appears in practically each year, in some cases not quite
12 double, in other cases double. So that as far as this
13 company is concerned there is just no doubt that the
14 greatest incidence of back cases is in the employees
15 from age 18 to age 30 and this, gentlemen, I must
16 emphasize is in a twelve year gap compared with from
17 30 to 60 of a five year gap.

18 THE COMMISSIONER: Did you say the
19 greatest difference was between 18 and 30?

20 MR. OSLER: Yes, it is 2.43 percent
21 in ages 18 to 30 and it is only 1.69 percent in any man
22 over 30. That was in 1961. In 1962, we have 4.2 percent
23 in the younger group and we have 1.36 percent in the
24 older group. In 1964, we have 3.19 percent in the
25 younger group and 2.06 percent in the older group and
26 in 1965 we have 5.90 percent in the younger and 2.82
27 percent in the older group.

28 MR. ESTEY: What was your remark about
29 the ten year gap?

30 MR. OSLER: This is not splitting our



1 working force halfway in age group. I am not taking a
2 breaking age, say, of 35 or 37: I am taking them merely
3 from 18 to 30 which is 12 years and from 30 to 65 you
4 have got 35 years. The heaviest concentration of age
5 is in the 30 to 40 bracket and in that respect, a state-
6 ment was made that the average age of the International
7 Nickel's work force in 1963 was 28. We have had that
8 checked from a specific calculation and the average age -
9 this was in the Mining and Smelting Division with refer-
10 ence to age 28 - in 1963 the average age in the Mining
11 and Smelting Division was 41.56; in other words, about
12 41-1/2.

13 THE COMMISSIONER: What year was that?

14 MR. OSLER: 41-1/2 years, sir, is the
15 average age in 1963. I have not had that calculation
16 made in the other years, sir. Some of these calculations
17 are lengthy to do, but I have examined and looked at
18 the statistical record of the work force in the company
19 in the other years by showing the age and number of
20 employees against those ages and to all intents and
21 purposes there is pretty much of a pattern each year.
22 I would expect if the calculation was made exactly, it
23 would come within a year or so of 41, so, in other words,
24 the age has remained pretty constant.

25 To go back, sir, to back incidence
26 which has increased alarmingly just in the last few years,
27 while the change in the Act of 1963 did not in itself
28 in 1964 give rise to a valid increase although it was
29 substantial enough from 208 in 1962 to 326 in 1964, by
30 the time 1965 came with 556 cases and in 1966, 448, this



1 is an alarming increase.

2 I should point out, sir, that we omitted
3 the year 1963 because that was the year in which the
4 definition of "Accident" was changed and I thought that
5 that would probably be an inappropriate year to include,
6 although we have no grounds for not considering that
7 the pattern is there. There has been no substantial
8 drop in back cases for that year. It was omitted purely
9 because of the change in the definition in the Act.

10 THE COMMISSIONER: Well, Dr. Sutherland told
11 us, or maybe it was Dr. Cavanaugh, that this change in
12 interpretation in 1964 about pre-existing injury did not
13 result in a great increase in back cases. He had certain
14 figures that he was able to refer to. You show an actual
15 increase. It did not appear that it was due to this
16 new interpretation of pre-existing injury. I have
17 forgotten to what he referred in that connection.

18 MR. OSLER: I must say, sir, I don't
19 think these figures relate strictly to pre-existing
20 injury, mind you.

21 THE COMMISSIONER: He took it from the sec-
22 ond injury fund because in all these pre-existing ones
23 they apparently take a chunk out of the second injury fund
24 to help pay for them, pre-existing injury.

25 MR. OSLER: I think I am correct in saying
26 as far as I know, sir, we would not know out of which
27 fund this was taken. I don't think we would know whether
28 this was taken out of the second injury fund or not.

29 THE COMMISSIONER: No, but by reference
30 to the number that had been referred to the second injury



1 accident fund. In 1962 there were 72, in 1962, 57,
2 1964, 80 and 1965, 106.

3 MR. OSLER: Is this with reference to
4 our industry alone?

5 THE COMMISSIONER: No, I was asking if
6 this change in 1964 had resulted in a large increase in
7 the costs that you had referred to previously and he
8 said no. Well, that might not be exactly what you are
9 talking about at the moment, but he based it on the
10 number of cases that they have gone back to the second
11 injury fund for. Perhaps I am confusing you a little
12 because it had relation to cost.

13 MR. OSLER: Insofar as cost is concerned,
14 sir, this, unfortunately, takes quite a considerable
15 time trying to dig out this information and trying to
16 put it into a form which would be readable. Certainly,
17 I realize the Board filed a breakdown of the class costs.
18 Between 1960 and 1965, it is really difficult to really
19 deal with. Certainly, it indicated a good record as
20 far as the class was concerned, due to accident prevention,
21 I suppose, and their percentage increase was less than
22 the whole of Schedule 1, but that does not help our
23 back problems.

24 THE COMMISSIONER: According to your
25 figures, you have got an increase of 900 people from
26 1961 to 1965 in the work force?

27 MR. OSLER: That is right.

28 THE COMMISSIONER: And you have got 100
29 percent increase in the number of back cases?

30 MR. OSLER: That is right.



1 THE COMMISSIONER: About a 17 percent
2 increase in the work force and 100 percent increase in
3 back cases?

4 MR. OSLER: Yes, sir.

5 I would like to, if I may, sir, deal
6 with two more minor things. There was some suggestion,
7 I believe, and I was not here, but I believe it was made
8 that temperature variations could lead to disc degenera-
9 tion and it was indicated that in a mine such as the
10 mines of the International Nickel Company, men would
11 experience in the general working area, severe changes
12 in temperature. I think the suggestion was that working
13 in a stope, getting very hot and then sweating and then
14 having to go and change and work in another stope where
15 they would be freezing cold, led to disc degeneration.
16 I have had a check made by the mine's ventilation
17 engineer of his records and report to me of the
18 temperatures recorded in the mine, each of the mines,
19 and in the working places, that is, in the stopes and
20 the manways and in the areas where the greatest majority
21 of these men would be working, that is, your drillers,
22 your timbermen, your stope leaders, this is the major
23 working force: the variation in temperature between all
24 the mines with one or two exceptions, is greatest from
25 between 60 degrees and 70 degrees. In each individual
26 mine the variation in temperature - this is the whole
27 year around, not just one given day - the variation in
28 temperatures for the whole year in any one of the mines,
29 such as Garson, Frood, Stobie, Drake, and what have you,
30 would be about 5 degrees. Now, the exceptions, there are



1 one or two - one is you are working up underground to
2 an open pit, the men who would be working the closest to
3 the bottom, the bottom of the working pit, they are
4 working at highest level underground; in the winter they
5 would be colder coming down through box holes there
6 and they would be working in a constant temperature but
7 it would be a colder temperature than this average we
8 are talking about. In certain instances, men might have
9 to - and this is very rare - proceed along a drift
10 which would be one of the ventilation drifts, for instance,
11 going to the lunchroom at noon where the temperature in
12 that drift would be cold. In that instance, the practice
13 is, of course, the men know they are working in that
14 area and they take their jackets with them to their stope
15 or pillar or wherever they are working, put it aside and
16 when they go back out they put it on - just like you and
17 I put on our coats in the wintertime to go out of the
18 building for lunch and back. Other than that, these
19 men work in what amounts to relatively speaking, a
20 standard, constant temperature.

21 THE COMMISSIONER: And not unusual
22 temperatures - 60 to 70 degrees?

23 MR. OSLER: Yes. This is taken all the
24 year around - 65 to 70, 67 to 72, 60 to 65, - it is not
25 unusual.

26 The other information was that a man
27 working in a classification known as nipper, would be
28 required to go up and down and in and out working in a
29 lot of places with a great extreme variation in tempera-
30 ture. Again, we would take exception to that statement.



1 A nipper normally would work only on, you might say,
2 two levels. If you are going to deal with a mine you
3 realize that, vertically, it is divided into a series
4 of floors like a building and, depending upon the type
5 of mining that you are going to use, or the system you
6 are going to use in mining, you will mine from one level
7 up to the next level, or you may mine from one level
8 down to the next level, depending on the type of mining.
9 A nipper is a person who gets materials. He may be
10 working on this top level, letting materials down into
11 the rooms between levels, you might say, where the working
12 is going on, or he might be nipping material up, but his
13 movement is going to be on those two levels and his
14 means of getting from one level to the other will be up
15 through what they call manways. They are a series of
16 ladders which go from one level to the next, you might
17 say a vertical tunnel, and he will go up there. So
18 that, the nipper does not race all over the place.

19 There are exceptions, there is no doubt
20 about it. Occasionally, certain specific areas perhaps
21 which are getting close to being mined out and that
22 type of thing, may have to use more than two levels but
23 this is rare; this is again not a general thing by any
24 manner or means.

25 In this connection, it must be realized
26 that the first level of supervision under the ground
27 is known as a shift boss. He has a certain number of
28 stopes under his direction with the men who work in
29 those stopes. The nipper is part of that stope boss's
30 crew. He will have a section on a level. He doesn't



1 have the whole mine. The nipper who works for him works
2 for him all day, so, again, the nipper does not travel
3 up and down constantly.

4 One other point I would like to bring
5 out at this time is in reference to some remarks which
6 were made again yesterday by, I think it may have been
7 Dr. Swanson, but it was in connection with a report on
8 coal mining in England, made some ten years ago and
9 then again in connection with a more recent report on
10 mining in Pennsylvania. I believe reference was made to
11 the fact that the height of the area in which the men
12 were working in the coal mine was low and there was a
13 great deal of stooping and bending, sometimes four or
14 five feet. I think you will see from those pictures,
15 Mr. Commissioner, that height is not a problem in this
16 type of mining that is carried on here and, normally
17 speaking, your heights in a given mining area will be,
18 your cut as they would call it, taking a slice, is 7 feet
19 at least and your working area and head room is over
20 6 feet.

21 THE COMMISSIONER: This is in your
22 particular mines?

23 MR. OSLER: I am subject to correction,
24 but I would think in the case of all of this hard rock
25 mining, certainly I am referring only with specific
26 knowledge to the Nickel Company's mines, but this would
27 apply in all their mines, there are various ways of
28 mining, there is the old timber stope which was used,
29 there is an example of it there. You will see there is
30 full head clearance in that. There are other types of



1 mining now, you take undercut and fill, where again you
2 are dealing with almost a 14 foot headroom in your work-
3 ing area. Undercut and fill is where you are going down
4 cutting out the floor at each level and cut and fill is
5 where you are cutting out a section of the ceiling and
6 dropping it down and then cutting out another and another
7 but each time you are taking 7 foot chunks out, as you
8 might say, or slices out and you have always got another
9 slice but you have 14 foot headroom. There is no
10 question of stooping and mining in a cramped position.

11 I want to make reference to one remark
12 which was made, I think by Mr. Poole of the Workmen's
13 Compensation Board. Again, our experience is directly
14 contrary to that which he gave. This was in connection
15 with total temporary disability matters. I think he
16 advised you, sir, that so far as the Board is concerned
17 a man, as soon as he had recovered from total disability,
18 had his compensation reduced because of his then not
19 being totally disabled, but just partially disabled. Our
20 experience has not been that. Our experience in 1965
21 was that there was only one case out of all claims for
22 compensation in 1965 which involved a total temporary
23 compensation and there was some, I think 4,000 odd, but
24 there was only one case where there was a reduction to
25 50 percent of the 75 percent because the man was only
26 partially disabled prior to coming back to work. Our
27 experience in a great many of these cases is that the
28 man never did come back on a temporary disability basis
29 for rehabilitation; they come right back to full duty,
30 but they are receiving full compensation up to the time



1 they came back to us.

2 THE COMMISSIONER: I may be under a
3 misapprehension in this connection. I understand that
4 this situation arises when a man who is put on permanent
5 partial disability that these are situations in which
6 they complain that they are unable - they say they should
7 be on full term disability because they are unable to
8 do work at that time. I may be wrong about that. Am I
9 wrong about that, Mr. Kerr?

10 MR. KERR: Mr. Commissioner, we are
11 referring to temporary partial disability. When the man
12 has gone through his period of temporary total disability
13 and he is then declared fit for suitable modified employ-
14 ment, we then reduce his compensation to temporary
15 partial disability. If he returns to work at that time,
16 which they do in many instances at the International
17 Nickel Company, we pay him on 75 percent of the wage
18 loss. If the man cannot be provided with suitable work
19 as is many times the occasion in industry generally, we
20 reduce his compensation to temporary partial which is
21 one-half of full compensation.

22 MR. OSLER: Our point, sir, I think is -
23 I certainly got the impression and I think Mr. Poole
24 made the presentation for the Board, that the reduction
25 to a 50 percent on the basis of temporary partial dis-
26 ability was a common occurrence. Our experience is not
27 that. I thank Mr. Kerr for his remarks. I think this
28 company does attempt in every case to find suitable
29 employment at least for a period for a man who has been
30 totally temporarily disabled, but with his doctor's



1 permission will start work on a light duty or a modified
2 process. We do, indeed, try to do that but the cases
3 which we feel do occur are those where the man has been
4 totally disabled, totally temporarily disabled and never
5 moves from a total temporary disablement to a partial
6 temporary disablement, but just comes back to us.

7 Illustrative of that, in 1965 there was
8 only one man who was in the situation where he was
9 receiving a reduced compensation due to the fact that
10 he was temporarily partially disabled.



1 THE COMMISSIONER: In other words, when
2 you bring these men back on who have been receiving
3 temporary total disability payments, you bring
4 them back on and you receive 50 percent from the Board?

5 MR. OSLER: We don't receive 50 percent
6 from the Board. We will take men back, but the man's
7 doctor must say that he can do some temporary work, do
8 some kind of work, and then we will take him back. In
9 that case, he will receive 75 percent of the difference
10 between the rate he was getting before the accident and
11 the rate he was getting with us on this scheme. There
12 are men who are on total disability and, in fact, they
13 are not totally disabled; they could have been back to
14 work, and the Board has not taken any action and said:
15 "You are able to work. Get at it." This really goes
16 to the rehabilitation section where we deal with getting
17 them back a little more forcibly.

18 THE COMMISSIONER: I have no doubt that
19 the Board recognizes and urges the wisdom of getting
20 the man back to work as soon as possible in the man's
21 own interest.

22 MR. OSLER: I am trying to keep this
23 brief, sir.

24 One comment I should perhaps make on
25 this point in the light of something said by Dr.
26 Paterson, I think. He refers to hard rock mining. It
27 is interesting to note that there is little or no silica
28 in the type of rock we mine, and silicosis is not a real
29 problem. Am I correct, Doctor? It is not a great
30 problem with us because of the lack of silica. Everybody



1 uses the expression hard rock and silica. We are not
2 so silica prone.

3 I would like to raise the next question
4 of reporting of accidents, that there would be a line-up
5 at first aid for hours on end for every little cut and
6 bruise and finger injury by wire. I think I should
7 explain that insofar as International Nickel Company is
8 concerned, they attempt, by instruction, signs, notices
9 and every conceivable way possible and on-the-job
10 instruction to require every single cut, bruise, sliver,
11 something in the hand, a piece of wire, to be reported
12 to the first aid. They all wear gloves, in any event,
13 or should wear gloves, in any event, and there is some
14 protection given there. The practice is that the man
15 goes to the first aid - and the men do this - they
16 go to the first aid; they will have a cut finger, a
17 sliver, any kind of first aid treatment. If there is
18 any problem, he is, of course, immediately sent to the
19 doctor. If it is not an injury which is going to require
20 his staying at home or being off work at all, his shift
21 boss is advised of that and of his condition. If the
22 man does not come to work the following day, following
23 such a cut or bruise, the first aid man's duty is to see
24 that any man he has treated is at work the next day. In
25 the event that the injury is more serious than at first
26 thought, then a report is made and sent to the Compensation
27 Board. So even the most minor injury, cut, sliver,
28 should be channelled and, in fact, is channelled through
29 the first aid. Men, of course, go to the first aid to
30 get their dressings changed. There is no question of



1 men being embarrassed in any way reporting their injuries
2 to the first aid where, if it is serious, it will be
3 reported to the Board; and the problem of delay in
4 reporting to the Board is negligible, or should be
5 negligible.

6 There was another thing I tried to get
7 information on. I made the remark that a very high
8 percentage of accidents were human error and human action,
9 rather than caused by equipment or condition. On the high
10 percentage I was talking about, I have some information
11 here. There is a book by H. W. Heinrich, Industrial
12 Accident Prevention, Third Edition, where I understand
13 the statement is made that 88 percent --

14 THE COMMISSIONER: Yes, you gave us that
15 on a previous occasion, 80 something percent.

16 MR. OSLER: 88 percent. I think he is
17 with the Traveller's Insurance. This was from a survey
18 he made, I understand, in Pennsylvania. Then there is
19 another book I obtained, which is the Department of
20 Labour and Industry, Pennsylvania, 1961. They report
21 that an unsafe act contributes to 98 percent of known
22 fatal manufacturing cases. I query the word "Manufactur-
23 ing" cases. It might be he is referring to a non-mining
24 case, but I think that this illustrates human error is
25 a major cause of accidents. I was taking exception to
26 the use of this -- "no fault of his own somebody was
27 injured." I think that is a mis-statement.

28 I am afraid I have wandered on many
29 subjects this afternoon trying to pick up the old things,
30 for which I apologize.



1 MR. ESTEY: There are one or two things
2 I want to ask in connection with other matters which have
3 come up.

4 First of all, you are replying to the
5 comments made by the Steelworkers, in connection with the
6 leyner machine, and the new machine - is there a name
7 that I can refer to?

8 MR. OSLER: Jackleg drill.

9 MR. ESTEY: The suggestion was made that
10 the old drill, while it weighed 200 pounds, once you got
11 it on the tube and mounted, there wasn't much work. The
12 new machine took more work to get it into position,
13 enough that it was suggested that the new machine weighs
14 more than 200 pounds.

15 MR. OSLER: To my knowledge, that is not
16 the case.

17 MR. ESTEY: Is there any planned increase?

18 MR. OSLER: Not that I am aware of. I
19 think you will see that there is an inaccurate statement,
20 all these holes being drilled by this one machine while
21 it is moving. I suggest there is much more effort with
22 the horizontal bar trying to lift it up.

23 MR. ESTEY: You put in a second hole with
24 the leyner drill and you have to either slide it along
25 the horizontal bar or slide it up the tube.

26 MR. OSLER: That is right.

27 MR. ESTEY: Does the new machine vibrate
28 like the old one, more so or less?

29 MR. OSLER: That I couldn't tell you.
30 I know no grounds to believe that the vibration is of



1 any consequence. You will notice that on the jackleg
2 drill, after it is started, there is a handle to hold
3 it, once he turns the air and water on.

4 MR. ESTEY: That is to aim it to the
5 part of the wall you want to work at?

6 MR. OSLER: He will probably hold it on
7 to nose in. But I have no knowledge of vibration. I
8 don't think vibration is a factor.

9 MR. ESTEY: Now, on the pre-existing
10 conditions, I don't understand precisely what your
11 position is. Are you saying that we should have the
12 British Columbia provision, Section 7 (5)?

13 MR. OSLER: Yes.

14 MR. ESTEY: And you do not want the
15 suggestion of Mr. Justice Roach?

16 MR. OSLER: No.

17 MR. ESTEY: You are not in favour of
18 that one?

19 MR. OSLER: No.

20 MR. ESTEY: You are in favour of the
21 British Columbia one?

22 MR. OSLER: Yes. And I do not favour
23 Mr. Justice Tysoe's suggestion on that one.

24 MR. ESTEY: You mean it should be given
25 consideration in subtraction from the compensation,
26 pre-existing condition?

27 MR. OSLER: Yes.

28 MR. ESTEY: So you say it takes in both
29 the partial disability already being compensated --

30 MR. OSLER: Well, being compensated or



1 not being compensated.

2 MR. ESTEY: Then there is an earlier
3 accident from which the man recovered, he didn't get
4 any pension, but which left scars. Then there is the
5 gradual condition occurring where you can point to an
6 accident when the condition arises. Then there is a
7 fourth category of inherent weakness, and you put them
8 all together and say that those elements should be sub-
9 tracted from the compensation, if any?

10 MR. OSLER: Yes, they should be taken
11 into consideration. I think the Commissioner himself
12 at one of the earlier hearings made the remark of
13 possibly driving employers to the extent of saying they
14 had to weed out any suggestion of pre-existing condition.
15 We do not x-ray back cases to pick up possible back
16 deformities or back alignment.

17 MR. ESTEY: Why don't you? Is it too
18 expensive?

19 MR. OSLER: Well, it is a question of
20 when it occurred. I certainly wouldn't say that the
21 company is threatening to do it, but I think the remedy
22 obviously is, when you balance it out, to make sure that
23 any person who has any question of weakness or injury to
24 the back is not hired in the first place.

25 MR. ESTEY: That takes me to the non-
26 traumatic back cases. I take it you have no similar
27 statistics on traumatic back cases?

28 MR. OSLER: I don't know, Mr. Estey. The
29 most I could do would be to try --

30 MR. ESTEY: Obviously, you don't have



1 any trouble there with the traumatic ones?

2 MR. OSLER: Yes.

3 THE COMMISSIONER: Isn't it a simple
4 matter of subtraction, on the ones you have given us?

5 MR. OSLER: Oh, no, sir, those are all
6 non-traumatic.

7 MR. ESTEY: What you are saying is that
8 the traumatic ones are no trouble, they are a small
9 fraction?

10 MR. OSLER: That is right.

11 MR. ESTEY: Looking at Column 8, Exhibit
12 26, you mentioned there is quite a substantial increase.
13 If you extend the 1966 through the year on the same
14 mathematical base, you are going to exceed the number
15 of claims there. Now, are these back claims accelerating
16 faster than the total number of claims in the work force
17 in those two years?

18 MR. OSLER: I think that our increase in
19 claims - I will put it the other way - I think our in-
20 crease in claims over the year probably is substantial,
21 the back cases.

22 MR. ESTEY: You say that back claims
23 covered by Exhibit 26 are increasing more quickly than
24 the general claims?

25 MR. OSLER: Yes.

26 MR. ESTEY: When you changed from the
27 5-to 3-day waiting period, a man who was off for three
28 or four days, of course, he didn't register a claim. That
29 is one explanation for this increase in claims.

30 MR. OSLER: I understand our back cases



1 are beyond the 5-day waiting period.

2 MR. ESTEY: What would you say would be
3 the reason for the increase?

4 MR. OSLER: The obvious one is that we
5 believe the Board is probably giving the benefit of the
6 doubt in a great many more cases than they would normally.

7 MR. ESTEY: The answer you just gave
8 would be an explanation of why the percentage over in
9 the right-hand column has dropped?

10 MR. OSLER: You say why the increase in
11 claims?

12 MR. ESTEY: I want to know why the
13 increase in a number of back claims. I take it one of
14 them is, as you have already indicated, the rather soft
15 attitude of the Board - I am not saying it, I am just
16 putting the question - might mean more claims than if
17 you had a tough tribunal staring down at the man?

18 MR. OSLER: Yes.

19 MR. ESTEY: What about aging?

20 MR. OSLER: No, I don't think that comes
21 into it.

22 MR. ESTEY: Well, if we eliminate working
23 conditions and aging, then something is exciting the
24 claims?

25 MR. OSLER: Yes. A claim under the
26 Workmen's Compensation is a far better thing to have than
27 under a sickness and accident policy, because you are
28 unlimited to time. I am hazarding on this. I cannot
29 give you any background. What I am saying here are the
30 facts. I think Mr. Ingle said that both the Mine, Mill



1 and Steelworkers today have been carrying on a very high
2 publicity campaign to report accidents and how you are
3 going to establish them. This may be an auto-suggestion
4 as to how to get into the deal.

5 MR. ESTEY: He said they had a policy,
6 a policy of appealing everything. I take it you would
7 say on this percentage increase that there has been a
8 more vigorous pursuit of the claim?

9 MR. OSLER: That is correct.

10 MR. ESTEY: Because if you subtract the
11 unknowns, which is (d), 1965, from those rejected, then
12 your percentage rejection drops below 5 percent.

13 MR. OSLER: I think the unknowns are
14 weighed in the wrong direction, as far as we are con-
15 cerned.

16 MR. ESTEY: If you take that out, you
17 go from 35 to less than 5 percent?

18 MR. OSLER: That is right.

19 MR. ESTEY: Then, so that we will have a
20 better statistical base for Exhibit 26, does the total
21 number of claims under (a) include claims for medical
22 aid and disability?

23 MR. OSLER: The claims under (a) are
24 claims made by the individual, either through reporting
25 of an accident to our first aid (and we make our normal
26 report to the Board on Form 7, whether we agree with the
27 thing or not) or in those cases where there has been a
28 late report or no report to us by the workman but the
29 Board writes to us saying that they have a report from
30 doctor so and so "Where is our accident report, where did



1 the alleged accident happen?" Now, those constitute the
2 claims made. Every time a man says, "I have hurt myself.
3 I have a sprain or a strain" - all we know is that a
4 man has made a claim.

5 DR. HAZELWOOD: This column (a) refers
6 to the ones where there have been claims to the Compensa-
7 tion Board. We could give you the claim numbers of
8 these 266 cases.

9 MR. OSLER: Some are rejected, of course.
10 Some are paid, some have got compensation for some period
11 of time. The ones where there is rejection, nothing
12 allowed, no compensation, that is the 43 and the 28,
13 are where the Board has refused to pay the man compensa-
14 tion on the basis of his claim, but where the doctors
15 assess the matter they pay the fee which is \$4.00 or
16 something like that. Column (a) is all claims that have
17 been filed with the Board, non-traumatic, no finger
18 injury or anything of that kind. We are dealing with
19 the 4,000 claims made of all types.

20 MR. ESTEY: My last question on Exhibit
21 26 is: Do you attribute any part of the decrease in
22 rejections of claims under that column?

23 MR. OSLER: Yes, I do. But, on the other
24 hand, if you look at the percentage on the right-hand
25 side, they come down from 17, 13 to 9. The only thing
26 I can say is this, and I think this was mentioned in the
27 House at the time of the amendment to the Bill, where I
28 believe the Minister of Labour said that this amendment
29 was going to, in fact, assist the Board in its general
30 policy to be within the policy they had established. This



1 doesn't agree with the material filed with the Board.
2 However, the only other explanation I can offer on the
3 change in the Act is that it has perhaps taken some time
4 to educate the claims officer to apply a more liberal
5 attitude, and that is probably why in 1965 and 1966 we
6 are experiencing the interpretation resulting from the
7 amendment in 1963.

8 MR. ESTEY: Thank you very much, Mr.
9 Osler.

10 THE COMMISSIONER: Thank you, Mr. Osler.

11 MR. OSLER: Thank you, Mr. Commissioner.

12 MR. ESTEY: Mr. Commissioner, Dr.

13 Kavanaugh wishes to speak and correct a statement he
14 made/in the course of his appearance before the Commission
yesterday

15 DR. KAVANAUGH: Mr. Commissioner, I wanted
16 to clarify one or two points I made yesterday. I thought
17 I had misled you, unintentionally, on one point, but I
18 heard your summary this afternoon to the gentleman from
19 Inco and I am not sure now that I had.

20 MR. ESTEY: I understood from Mr. Kerr
21 that you wished to speak, and you might put it on the
22 record.

23 DR. KAVANAUGH: You will remember that,
24 for the purposes of qualification, we would divide our
25 disabilities into measurable and non-measurable, and I
26 gave you an example of measurable, namely, the limbs.
27 Then we got on to the matter of eyes, and I think Mr.
28 Guthrie asked what we would do about blindness. Now,
29 the situation is this, that we apply across the board
30 a limitation for measurable defects and impaired organs,



1 and we do this in matters of vision right up to the level
2 of total blindness, but in total blindness we do have a
3 Board order which accepts this and we pay 100 percent,
4 we accept 100 percent liability for total blindness, even
5 though the man may have only one eye prior to being
6 employed. This is the only exception where we have
7 measurable defects and impaired organs. If a man has
8 a defect short of total blindness, we deduct the value
9 of that defect from the disability.

10 THE COMMISSIONER: Thank you.

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30



1 MR. ESTEY: Thank you, Dr. Kavanaugh.

2 Mr. Commissioner, Dr. Mastromatteo is
3 here today and I believe he has something to say to the
4 Commission in connection with heart and lung conditions
5 in the uniformed services, for instance, heart and lung
6 disease in firefighters.

7 THE COMMISSIONER: I am in some difficulty
8 about time, Mr. Estey. I have an appointment which I am
9 afraid I have to keep. Will this take very long?

10 MR. ESTEY: I understood it would be very
11 brief.

12 THE COMMISSIONER: All right, very well,
13 I certainly have time to hear that.

14 DR. MASTROMATTEO; I am sorry to have to
15 keep you while I speak again, but this came up in the
16 questioning of Dr. Paterson. In several of the United
17 States there are so-called heart and lung bills which,
18 in essence, went something like this: If a man is
19 employed as a firefighter or a policeman and is in good
20 health at the time of examination and develops heart or
21 lung disease after ten years of service he should auto=
22 matically be compensated for these conditions. This has
23 been accepted in many of the United States.

24 THE COMMISSIONER: There was a similar
25 recommendation made to us in connection with a miner who
26 works for ten years in the mine and then develops tuber=
27 culosis or anything else.

28 DR. MASTROMATTEO: This is the basis,
29 anyway, of these heart and lung bills. Based on this
30 kind of inquiry, a study was made of firefighters in the



1 City of Toronto and, in truth, the cardio-vascular
2 mortality is increasing in firefighters over what you
3 would expect compared to average males, but the lung
4 deaths are decreased so there is no basis for that one
5 statement which may have appeared earlier that there is
6 an increased risk of mortality through inhaling smoke
7 over long periods of firefighting.

8 However, I think the explanation for the
9 increase in heart mortality is explained by a multitude
10 of factors. One of them is based on the physical selection
11 of firefighters. To be a firefighter you have to be a
12 certain height, a certain weight on entry to the service
13 and this obviously picks out of the general population
14 those people who are sturdy, muscular individuals and
15 we know medically that sturdy, muscular individuals
16 have a higher incidence of heart disease, so we cannot
17 attribute this increase to the conditions of the service
18 but, more importantly, to a selection of certain physical
19 types from the general working population.

20 I think that is important information to
21 bring up.

22 MR. ESTEY: Thank you very much, doctor.
23 Those are the submissions for the day.

24 THE COMMISSIONER: I regret to say that,
25 by reason of the fact that we have been up to the present
26 usually getting through by Thursday with the work
27 schedule for the week, I had undertaken to do some work
28 in my own court tomorrow which had to be done anyway
29 some time during the month and, as a consequence will
30



1 be unable to sit here tomorrow. So, Mr. Hall, we will
2 have to hear you on Monday, I am afraid, and the same
3 with the Federation of Labour before we go on with what
4 is scheduled for Monday.

5 So, we will adjourn until 10:00 A.M.,
6 on Monday morning.

7
8
9 ---At 4:20 P.M., the Hearing adjourned until 10:00 A.M.,
10 on Monday, 24th of October, 1966.
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30



Nethercut & Young

Toronto, Ontario

IN THE MATTER OF the Public Inquiries
Act, R.S.O. 1960, Ch. 323

- and -

IN THE MATTER OF an Inquiry Into and
Report Upon The Workmen's Compensation
Act

BEFORE: The Honourable Mr. Justice S.A.
McGillivray, Commissioner, at
Room 200, 67 Richmond Street
West, Toronto, Ontario, on Monday,
24 October, 1966.

APPEARANCES:

W.Z. Estey, R.C.)	
and)	Counsel to the Commission
H.D. Guthrie)	
H.Y. Yoneyama)	
C.G. Gibson)	
T.H. Eberlee)	Ontario Department of Labour
J. McNair)	
D.F. McLean)	
Dr. J. Schisler)	Motor Vehicle Manufacturers'
R. Fair)	Association
W. Hall	International Union of Mine, Mill and Smelter Workers
H. Weisback)	Ontario Federation of Labour
J.H. Craigs)	
R.E. Scott	Ontario Pulp and Paper Makers' Safety Association



Nethercut & Young

Toronto, Ontario

INDEX

Page No.

1	Department of Labour	2071
2	Motor Vehicle Manufacturers' Association	2154
3	Ontario Federation of Labour	2170
4	International Union of Mine, Mill	2204
5	Ontario Pulp and Paper	2215

6		
7		
8		
9		
10		
11	29 Organizational Chart of Department of Labour	2073

12		
13	30 Breakdown of Total Costs by department of Department of Labour	2119
14		

15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30



1 --On commencing at ten o'clock a.m.

2
3 MR. ESTEY: Mr. Commissioner, the
4 hearings for the week commencing October 24th will deal
5 with the topics Accident Prevention, including Enforce-
6 ment Procedures, Employers' Incentive Plans, Merits
7 Rating, Publicity, Application of Section 86, which is
8 the demerit systems, and finally Safety Associations.

9 The topics I have read out are
10 illustrations of the general heading "Accident
11 Prevention". We have reviewed the briefs which have
12 been filed to date, and we find that there are about
13 fifteen associations, companies, and individuals who
14 wish to discuss the matter of safety and accident
15 prevention with the Royal Commission. We also have
16 received a very comprehensive statement from the
17 Department of Labour as to the safety matters under
18 the jurisdiction of that department and together with
19 a supporting booklet of all their regulations under
20 that topic.

21 With your permission, Mr. Commissioner,
22 we propose to start with the Department of Labour's
23 description of their accident prevention departments,
24 divisions, sections and thereafter proceed through the
25 brief to deal with this topic.

26 I understand that the Department of
27 Labour are here this morning and ready to proceed, sir.

28 MR. EBERLEE: Mr. Commissioner, with
29 me this morning are Mr. C. G. Gibson, Director of
30 Safety and Technical Services; Mr. Harold Yoneyama,



1 Director of the Industrial Safety Branch; Mr. James
2 McNair, Director of the Construction Safety Branch; and
3 Mr. D. F. McLean, Assistant to the Director of Safety
4 and Technical Services.

5 THE COMMISSIONER: Have you some sort
6 of chart, something which shows these setups within
7 your Department of Labour?

8 MR. EBERLEE: Yes, we have an organiza-
9 tional chart.

10 THE COMMISSIONER: Thank you.

11 MR. EBERLEE: Mr. Gibson reports to the
12 Deputy Minister on behalf of the five Safety and
13 Technical Branches in the department, and these
14 gentlemen, Mr. McNair and Mr. Yoneyama, report to Mr.
15 Gibson. This is the structure.

16 THE COMMISSIONER: There is a Director
17 of Safety and Technical Services?

18 MR. EBERLEE: Yes.

19 THE COMMISSIONER: And that is Mr.
20 Gibson?

21 MR. EBERLEE: That is correct.

22 THE COMMISSIONER: And all of the five
23 officials come under him?

24 MR. EBERLEE: That is correct, five
25 safety men.

26 THE COMMISSIONER: The Chairman of the
27 Board of Examiners of Operating Engineers, the Chief
28 Inspector of Boilers, the Engineer and Chief Officer of
29 Construction Safety, Chief Elevator Inspector, Director
30 of Industrial Safety. I suppose he pulls in all the



others.

MR. EBERLEE: That is correct.

MR. ESTEY: Shall we file this?

THE COMMISSIONER: Yes. Exhibit 29.

EXHIBIT NO. 29:

Organizational chart
of Department of
Labour.

MR. EBERLEE: Would you like me to read
this document, sir?

THE COMMISSIONER: What are you reading
from?

MR. EBERLEE: A memorandum which outlines
the responsibilities.

A large part of the legislation
assigned to the Department of Labour by the Legislature
or the Lieutenant Governor-in-Council deals with the
safety, health and welfare of workers in the course of
their employment, except in mines and associated
establishments under the jurisdiction of the Department
of Mines, and with public safety.

The Department's safety legislation
has been brought up-to-date following the general
principles set down in the Report of the Royal
Commission on Industrial Safety in 1961. This legisla-
tion is administered through five branches of the Safety
and Technical Services Division. The supervision and
co-ordination of the functions of this group are
effected through the Director of Safety and Technical
Services who reports directly to the Deputy Minister.



The five branches and the statutes, regulations and codes which each administers are as follows: -

BOILER INSPECTION BRANCH

Boilers and Pressure Vessels Act, 1962-63 and Reg. 39, R.R.O. 1960.
A.S.M.E. Boiler and Pressure Vessel Codes.
C.S.A. Standard B51, 1965, Code for the Construction and Inspection of Boilers and Pressure Vessels.
C.S.A. Standard B52, 1965, Mechanical Refrigeration Code.

CONSTRUCTION SAFETY BRANCH

Construction Safety Act, 1961-62, as amended by 1962-63, c. 22 and 1965, c. 19 and Ont. Reg. 170/62.
Department of Labour Act, R.S.O. 1960, c. 97, as amended and Ont. Reg. 100/63 (Underground Work).
Trench Excavators' Protection Act, R.S.O. 1960, c. 407, as amended 1965, c.133 and Reg. 559, R.R.O. 1960.

ELEVATOR INSPECTION BRANCH

Elevators and Lifts Act, R.S.O. 1960, c.119, as amended 1961-62, c. 38 and 1965, c. 35 thereto and Ont. Reg. 4/66 (General) and 262/65 (Ski Lifts).



1 Construction Hoists Act, 1960-61, and
2 Ont. Reg. 311/62.
3 C.S.A. Standard B44, 1966, Safety Code
4 for Elevators, Dumb-waiters and
5 Escalators.

6
7 INDUSTRIAL SAFETY BRANCH

8 Industrial Safety Act, 1964, and Ont.
9 Reg. 196/64 (General), Ont. Reg.
10 197/64 (Foundries) and Ont. Reg.
11 225/65 (Grain Elevators).

12
13 OPERATING ENGINEERS BRANCH

14 Operating Engineers Act, R.S.O. 1960,
15 c. 282 and Reg. 473, R.R.O. 1960.
16 Operating Engineers Act, 1965. This Act
17 and Regulations will be proclaimed
18 shortly, and will replace the 1960
19 Act.

20
21 THE DIRECTOR'S OFFICE

22 The Director and his assistant are
23 professional engineers. The staff includes a research
24 engineer whose task is to provide factual information on
25 the latest safety measures and codes as directed and to
26 act as secretary to the Board of Review of The Operating
27 Engineers Act 1965. Two stenographers make up a total
28 of 5 for the Director's Office. The Director maintains
29 liaison with the Labour Safety Council of Ontario, the
30 Workmen's Compensation Board, the Hydro Electric Power



1 Commission of Ontario, as well as other government depart-
2 ments and commissions.

3 THE COMMISSIONER: Who is the Labour
4 Safety Council?

5 MR. EBERLEE: The Labour Safety Council
6 is an advisory body to the Minister established under
7 the Department of Labour Act, with seven representatives
8 from management and seven from the unions, and I am the
9 Chairman at the present time. There a section later on
10 in this memorandum which refers to the Labour Safety
11 Council.

12 THE COMMISSIONER: Seven representatives
13 from management and seven from labour, and you act as
14 Chairman, do you?

15 MR. EBERLEE: That is correct.

16 The Director also represents the
17 Department on committees dealing with occupational safety
18 such as the Reactor Safety Advisory Committee of the
19 Atomic Energy Control Board.

20 THE BOILER INSPECTION BRANCH is headed
21 by the Chief Inspector of Boilers. His staff consists
22 of an assistant Chief Inspector, a professional engineer,
23 two examiners of designs, and examiner of welding, a
24 western division supervisor, an eastern division
25 supervisor and 38 field inspectors. In addition to the
26 technical personnel, the necessary clerical staff brings
27 the total to 65.

28 Designs of new boilers and pressure
29 vessels are examined and approved before fabrication and
30



1 Branch inspectors inspect this new equipment during
2 fabrication. New boilers, pressure vessels and pressure
3 piping are inspected during installation, annually while
4 in service, and preceding and following major repairs.
5 Boiler inspection insurance companies are required to
6 furnish the Department with copies of their inspectors'
7 reports of annual inspections. Pressure vessels of all
8 types manufactured in other countries or other
9 provinces are permitted to be used in Ontario only if
10 their drawings have been approved and the normal
11 inspections during construction have been made by
12 responsible authorities. These include the United
13 States National Board of Boiler Inspectors on which our
14 Chief Inspector of Boilers serves as a director.

15 The testing of operators for the
16 welding of boilers and pressure vessels and high
17 pressure piping and for the approval of welding proce-
18 dures are additional services rendered by Departmental
19 inspectors who are highly respected for their knowledge
20 of the most modern welding procedures and materials.

21 The Act requires that certificates of
22 qualification, granted after the passing of a written
23 examination, be held by every boiler inspector, not
24 only on our own staff, but also on that of every
25 insurance company insuring boilers and pressure vessels
26 in Ontario. Thus, inspectors of firms from Buffalo,
27 Detroit, Montreal, etc. insuring Ontario boilers come
28 under the requirement of annual renewal of their
29 certificates so as to fall in line with Ontario's
30 inspection standards.



1 In the last fiscal year, 38 inspectors
2 inspected 53,928 boilers, pressure vessels and plants,
3 investigated 28 accidents and explosions, made suitable
4 directions to prevent similar failures and condemned
5 35 pressure vessels and 32 boilers. The Branch approved
6 3,021 new designs, issued 265 certificates of competency
7 to boiler inspectors from boiler insurance companies and
8 tested 8,633 welders.

9
10 THE CONSTRUCTION SAFETY BRANCH is headed
11 by a professional engineer whose title is Engineer and
12 Chief Officer. He has on his staff another professional
13 engineer, 12 construction safety officers, 4 inspectors
14 of caissons and a clerical staff, making a total of 20.

15 This Branch is concerned with the safety
16 of workmen engaged in the construction, alteration,
17 repair, demolition or removal of buildings or other
18 structures, streets and highways, in the excavation
19 of trenches and in underground work in shafts and
20 tunnels, caissons, coffer dams and any work under
21 compressed air.

22 The Branch's inspection staff work with
23 the 246 municipally appointed inspectors enforcing The
24 Construction Safety Act, and the more than 1,000
25 inspectors enforcing The Trench Excavators' Protection
26 Act.

27 THE COMMISSIONER: Are they municipal,
28 too?

29 MR. EBERLEE: Yes.
30



1 The Branch officers instruct, advise
2 and assist the municipally appointed inspectors, make
3 regular visits to each municipality to carry out joint
4 inspections and discuss interpretation and policy
5 matters with local authorities.

6 Last year there were 106,564 inspections
7 of construction sites which resulted in 244 charges and
8 85 convictions. Stop-work orders were issued in 2,005
9 cases where dangerous working conditions existed and
10 orders to correct unsafe conditions numbered 12,450.
11 Caisson inspectors made 3,637 inspections on 519
12 projects that involved 165,413 lineal feet (30.5 miles)
13 of tunnelling.

14 THE ELEVATOR INSPECTION BRANCH is staffed
15 by a Chief Inspector of Elevators, an assistant Chief
16 Inspector, 2 professional engineers, 23 inspectors and
17 12 clerks, a total of 39.

18 Provincial elevator legislation provides
19 for the safety of persons using elevators, escalators,
20 dumb-waiters, incline lifts, ski lifts, ski tows and
21 construction hoists, thus broadening the scope of the
22 Department's accident prevention services to encompass
23 the field of public safety.

24 In order to achieve the desired
25 standard of safety, the Branch first requires that all
26 elevator contractors be registered annually with the
27 Chief Inspector. Next, the drawings and specifications
28 for every new installation or "major alteration" must be
29 approved by an engineer of the Department prior to the
30 commencement of construction. When the work indicated



1 in such approvals has been completed, an elevator
2 inspector makes a complete inspection of the installa-
3 tion and then, if it complies in every way with the code,
4 the device may be granted its annual licence.

5 Henceforth, these, as well as all the previously existing
6 installations, are inspected annually.

7 In the last fiscal year the engineers
8 approved 1,206 sets of drawings while the inspectors
9 made 7,989 inspections of regular installations and
10 1,566 inspections of construction hoists. The work
11 load for this year has been tremendously increased due
12 to the fact that the Branch is now responsible for annual
13 inspections of all the installations formerly inspected by
14 insurance inspectors. Accordingly, the inspection and
15 clerical staffs are being increased to cope with the
16 added volume of work.

17 THE INDUSTRIAL SAFETY BRANCH is comprised
18 of two sections, the Engineering Section and the Safety
19 Section. The Director of the Branch is a professional
20 engineer and, in order to facilitate the application of
21 some portions of the Act, he also has the title of Chief
22 Inspector. He has on his staff an assistant, a chief
23 engineer, 4 regional managers, an office manager, 10
24 professional engineers, 6 engineer's assistants, 1
25 foundry inspector, 59 industrial safety officers and 31
26 clerical personnel, a total of 115.

27 The Engineering Section, under the
28 authority of Section 16 of the Act, examines and
29 approves drawings and specifications of factories, shops,
30



1 office buildings and grain elevator ventilation systems
2 prior to their construction or alteration. The
3 examination includes a check of the structural stability
4 of the buildings, a survey of the means of rapid egress
5 in case of fire, an assessment of employee service
6 facilities provided, based on the proposed occupancy
7 figures, and a thorough appraisal of the possible
8 health and fire hazards which may arise because of the
9 manufacturing processes to be carried on in the
10 industrial plant. The latter aspect of the examination
11 often requires the assistance of an occupational health
12 specialist from the Environmental Health Branch of our
13 Department of Health, whose initial contribution is
14 usually made during a discussion in the engineer's
15 office with members of the industry's technical staff
16 and their outside consultants. Later on, the results
17 of the examination may require that the Ontario Water
18 Resources Commission and the Air Pollution Control
19 Division of the Department of Health be informed that
20 there will be industrial wastes to be disposed of. It
21 is also possible that electrical hazards may be present,
22 in which case, the Hydro Electric Power Commission of
23 Ontario is informed or consulted. Finally, the
24 applicant is instructed to consult any other branch
25 in the Department whose legislation is applicable to the
26 project.

27 When the approved construction has been
28 completed, the engineer's assistants employed in the
29 Section go out to the job with the file copy of the
30 approved drawings and check that the project complies



1 with all of the Department's requirements. Acceptable
2 changes are noted on the file copy and deficiencies are
3 later ordered rectified by the approving engineer.

4 Drawing approval also includes the
5 approval of exhaust ventilation systems required in
6 foundries under the authority of the Foundry Regulations.
7 These approvals are done by an engineer who specializes
8 in this field and a follow-up inspection, similar to that
9 done for buildings, is made by the foundry inspector
10 who also makes regular inspections of existing
11 foundries.

12 The engineers of the Section are also
13 responsible for making investigations of fires and
14 explosions, particularly where fatalities occur, and for
15 making joint inspections with Industrial Safety
16 Officers or Supervisors, where there is an engineering
17 problem.

18 The Safety Section of the Industrial
19 Safety Branch, organizes the Province into four regions,
20 Southern, Central, Eastern and Northern. Each region
21 has a manager and one or more supervisors. The regions
22 are further divided into districts each with a District
23 Industrial Safety Officer. Each region also has 3
24 female inspectors whose prime concern is for the welfare
25 of the female employees in their regions.

26 The duties of the industrial safety
27 officers are many and varied. They are required to make
28 regular inspections of all industrial establishments
29 in their districts and issue directions regarding
30 unsafe machines and practices, inadequate ventilation,



1 fire safety and sanitary facilities, and poor house-
2 keeping. Many of their visits are special calls at the
3 invitation of management, who often seek and value the
4 advice of the officers when contemplating the introduc-
5 tion of new machines or processes which may be hazardous.

6 The directions issued by the officers
7 are followed up by head-office, and in the event that
8 the employer does not complete the required work in a
9 reasonable time, and so inform the head-office, the
10 officer is required to make a call-back inspection to
11 review the progress, if any, and possibly recommend
12 prosecution.

13 The demands on the facilities of the
14 Safety Section continue to increase to keep in step
15 with Ontario's industrial expansion. In the fiscal
16 year ending March 31st, 1966, 59 officers made 59,688
17 inspections and issued 53,632 directions to correct
18 violations of the Act and Regulations.

19 THE OPERATING ENGINEERS BRANCH consists
20 of a Board of Examiners, 6 inspectors and an office
21 staff of 11 persons, totalling 21.

22 The role of this Branch is to ensure
23 that competent personnel are operating all steam heating
24 and power plants, compressor plants, refrigeration
25 plants and hoisting machinery falling in the categories
26 designated by The Operating Engineers Act.

27 In order to achieve this standard of
28 safe operation, the Board of Examiners conducts
29 examinations of persons applying for certificates for
30



1 the various classes of stationary engineers and hoisting
2 engineers. Further to this programme, the Board has
3 recently updated the "Basic Power Plant Engineering"
4 text book and republished the "Operating Engineers
5 Handbook".

6 The 6 inspectors travel the Province
7 and visit power plants, industries and construction
8 sites to determine if the various installations are
9 staffed with properly qualified personnel. Last year
10 the Board conducted 3,148 examinations and issued 4,378
11 registration certificates to plant owners and 31,561
12 certificates of qualification to operating engineers.

13 LIAISON WITH THE ACCIDENT PREVENTION

14 ASSOCIATIONS is considered to be of prime importance
15 and is particularly applicable to our Construction
16 Safety and Industrial Safety Branches. The engineers
17 and officers of these branches are always available
18 to assist with the programmes for meetings and courses
19 sponsored by the Accident Prevention Associations.
20 This participation is usually in the form of talks on
21 Department of Labour legislation and its enforcement.
22 On the other hand, the Department when training its own
23 staff takes advantage of the films and other educational
24 material available from the Accident Prevention
25 Associations.

26 By mutual agreement, when Accident
27 Prevention Association Counsellors detect a violation
28 of one of the Department's Acts, such as the absence
29 of an elevator licence or a Boiler Certificate of
30



1 Inspection, a written notice is sent to the appropriate
2 Branch Head. Conversely, when an Officer of the
3 Department sees that an employer or his supervisory
4 staff could benefit from an organized safety education
5 programme the appropriate Accident Prevention Association
6 is so informed. This co-operation is apparent between
7 field officers and counsellors, as well as at management
8 level.

9
10 THE LABOUR SAFETY COUNCIL OF ONTARIO

11 This Council, though not responsible
12 to the Director of Safety and Technical Services, works
13 with him and the Workmen's Compensation Board toward
14 the common goal of accident prevention. It was formed
15 in December, 1961, on the recommendation of the Royal
16 Commission on Industrial Safety and originally
17 consisted of a Chairman, 6 members and a secretary.

18 In January, 1966, the Council was
19 reconstituted so that its present membership includes
20 a Chairman, the presidents of the seven Accident
21 Prevention Associations and corresponding senior labour
22 representatives. The Council is now assisted by a full
23 time staff under an Executive Director.

24 It is the duty of the Labour Safety
25 Council to advise the Minister of Labour on all matters
26 pertaining to safety education, enforcement of legisla-
27 tion and accident prevention. The Council may be
28 called upon to suggest improvements in programmes and in
29 co-ordination between programmes. It is also expected
30 to advise on any proposed legislation or regulations



Nethercut & Young

Toronto, Ontario

2086

1 referred to it by the Minister and to continue to review
2 existing legislation.

3 THE COMMISSIONER: Thank you, Mr.
4 Eberlee. Mr. Estey may have some questions.



N/SS 1 MR. ESTEY: Mr. Eberlee, as you are well
2 aware, the interest of this Royal Commission is not into
3 examining the detailed functions of each wing of your
4 department, but to examine the relationship between some
5 functions of your department and those of the Workmen's
6 Compensation Board. Your memorandum is very helpful and
7 there^{are}/two or three things I would like to ask you
8 related to this memorandum.

9 First of all, we see that in some
10 provinces the 'whole of this safety business and compensa-
11 tion is focussed into one avenue, whereas in Ontario we
12 have a compensation tribunal on the one side and the
13 safety regulation agency on the other with a little grey
14 area in between, the safety associations. Now, can you
15 tell us or do you know when these safety associations
16 were started up under the Board and if you know why they
17 were not started up under the Department of Labour?

18 MR. EBERLEE: I don't know the exact
19 dates. I believe the I.A.P.A. or its predecessors goes
20 right back to the beginning of the Compensation Act.
21 Some of the managers of the safety associations are here
22 and they could undoubtedly be more specific.

23 I think maybe the associations were set
24 up originally as a method by which the industry itself
25 could prove its own standards. In that sense they are
26 voluntary, although every firm does belong because of
27 the assessment contributions made to the Compensation
28 Board. I think there has been an attempt to maintain a
29 voluntary element here, an element of participation by
30 industry, by executives, by management, and so on, in safety



1 programs. So I believe that is why this system has
2 grown up on this basis.

3 MR. ESTEY: Without asking your opinion
4 on policy matters (I do not intend by inference to be
5 doing that) could those associations still excite the
6 voluntary participation of management be they under the
7 administration of the Board on the one hand, or the
8 Department of Labour on the other, in your opinion.

9 MR. EBERLEE: No, I don't think they
10 would excite, as you say, the voluntary participation
11 of management to the same degree. One reason why I say
12 that is that I have heard that view expressed by people
13 who are participating in the activities of the
14 associations.

15 THE COMMISSIONER: I am sorry, Mr. Estey,
16 I was paying attention to another matter when you asked
17 your question. What was your question?

18 MR. ESTEY: I asked him whether in his
19 opinion these voluntary --- and I put quotes around
20 this word "voluntary", safety association setup could
21 function equally effectively or more or less effectively
22 be they under the Workmen's Compensation Board or be they
23 under the Department of Labour.

24 MR. EBERLEE: Of course, in a sense they
25 are under the Compensation Board. The Board has
26 established a new safety education department with a
27 director whose task it is to oversee operational matters,
28 budgets and so forth. But I suspect that the programs
29 of these associations might lose considerably if the
30 participation of members of the institute were not



1 available.

2 MR. ESTEY: Let me examine the same
3 thing from a different angle. We have heard or read
4 representations from contractors, specifically I have
5 in mind one who is in the demolition business, and he
6 wrote a letter which in effect amounted to a protest
7 that the Compensation Board was penalizing him because
8 he was operating in a part of the province where his
9 demolition did not carry him up into the high levels
10 of buildings as in Toronto, but he paid the same rate
11 on the payroll. The Compensation Board's view perhaps
12 was more statistical than direct contact with his
13 problem. They said, "Well, there is no evidence that the
14 accident incidence is higher or lower in direct or
15 inverse importance to the height of the building they
16 are tearing down". I see under your regulations that
17 this kind of operation comes under the inspection of
18 the Department of Labour, all of which is a long
19 preface to ask you the question whether or not the
20 Board and/or the Department of Labour would not be in
21 a better position to assess this kind of thing if the
22 whole of the safety regulations and administration and
23 enforcement, to use a tougher word, were under the one
24 authority than under the split arrangement which we
25 have now. Your department, for example, must have a
26 thorough understanding ^{through} / the construction safety
27 branch of the frequency of accidents on the different
28 kinds of demolition, whereas apparently the Board does
29 not.

30 MR. EBERLEE: I think these are two



1 different questions, are they not? One deals with the
2 basis for assessment and I certainly am not qualified
3 to comment in that area, and the other deals with the
4 enforcement of safety standards.

5 THE COMMISSIONER: The Board by the
6 penalty provided in the assessment section, if not
7 satisfied with the accident prevention rate or not
8 satisfied with the accident rate of any particular
9 employer, can penalize him by jumping his rate or do
10 something, in any event, in such a way as to get
11 cooperation. I suppose in that respect it feels that
12 it has a particular interest in the educational work
13 which is all the safety prevention work that comes
14 under that is. What Mr. Estey is probably concerned
15 with is whether or not there is some overlapping here
16 or maybe lack of ability to enforce, both of which might
17 happen with a divided jurisdiction, and if there is
18 any, how to best get at the remedy.

19 MR. ESTEY: Perhaps I could put it more
20 clearly if I said this: The effect of the Board's
21 approach to that problem is to regulate in the sense
22 of encouraging safety habits by a steep assessment
23 on a contractor doing demolition work. The contractor
24 says, "The regulations which I am working under are
25 common to the whole industry throughout the province,
26 but the safety incidence is related to the size of the
27 building you work on and out in Kingston we don't have
28 the tall buildings to tear down that you do in Toronto".
29 It would seem to us that the Department of Labour would
30 be in a pretty good position to assess the merit of that



1 comment, whereas because the Board does not have the
2 power to make and enforce safety regulations or the
3 staff to inspect them it is not in a position to weigh
4 the merits of that; they simply take a statistical
5 approach based on the accident fund.

6 Does that set the stage a little better
7 for the question as to what the Department of Labour's
8 view is on that specific kind of relationship or lack
9 of relationship between enforcement of safety
10 regulations on the one hand and the awarding of assessment
11 rates on the other?

12 MR. EBERLEE: This is a difficult area.

13 THE COMMISSIONER: I wonder is it a fair
14 question of Mr. Eberlee what the Department of Labour's
15 attitude towards this is. This may be a matter that
16 has to be decided on a higher level. It might not be
17 fair to exact an answer unless he chooses to make a
18 statement.

19 MR. EBERLEE: I can make the pious
20 statement that naturally we at the administrative level
21 of the Department of Labour want to see the system that
22 is the best system adopted. We have done a bit of
23 talking about this very point ---- well, it is always
24 under discussion, but we have done a lot more talking
25 about it recently in the light of the contents of
26 certain briefs that have been presented. If I express
27 any opinion I suppose it might be thought that it was
28 a policy opinion and anything I would say would be
29 purely a personal view on that matter. Perhaps for that
30 reason it would not really be worth very much.



1 MR. ESTEY: Let me put it to you
2 differently. In another brief we have this comment:

3 "It has been our experience that
4 there are a number of enforcement
5 agencies often working at cross=
6 purposes in the safety inspection
7 field. For example, the Workmen's
8 Compensation Board engages inspectors
9 to check first aid facilities and
10 equipment while the Safety
11 Inspection Branch of the Department
12 of Labour sends out inspectors to
13 ensure compliance with the Construc=
14 tion Safety Act and other statutory
15 regulations. Municipalities some=
16 times employ inspectors for purposes
17 of checking safety on construction
18 sites within its jurisdiction, and
19 employers themselves often have
20 inspectors for various purposes.
21 Interwoven with the activities of all
22 these agencies are the various
23 accident prevention associations
24 that are financed ^{to} / a large extent by
25 the Workmen's Compensation Board."

26 It is easy to point out that there is an overlay of
27 field men, but that does not prove anything if the
28 field men are doing different work. Now, to break that
29 down I take it that under your construction safety
30 branch and your industrial safety branch that there is a



Nethercut & Young

Toronto, Ontario

1 considerable overlap of necessity between the Department
2 of Labour on the one hand and the municipalities'
3 building departments on the other hand.

4 MR. EBERLEE: Not really, no. Our
5 industrial safety people have a very definite area of
6 jurisdiction. I should add that our industrial safety
7 officers do check for first aid equipment on behalf of
8 the Compensation Board, so there is no conflict there.
9 But on the other side we have our construction safety
10 field with the municipalities being required under the
11 Act to appoint inspectors and our men there are
12 primarily watchdogs, prodders, trainers and so on for
13 the enforcement people at the municipal level.

14 I don't think there is conflict there.
15 There is no conflict between us and the municipalities.

16 THE COMMISSIONER: There is not a
17 conflict, perhaps, but if your inspectors are
18 dissatisfied with what they see they have little
19 authority to exact some action from the municipalities,
20 I take it.

21 MR. EBERLEE: They go in with the
22 municipal inspector and will make a joint inspection if
23 they are not happy with a situation.

24 THE COMMISSIONER: But action has to be
25 taken by the municipality?

26 MR. EBERLEE: Yes.

27 THE COMMISSIONER: And if they for
28 reasons of their own don't care to do it, I suppose
29 your inspectors would have no authority to do anything.
30 This might be outside my jurisdiction, of course.



1 MR. EBERLEE: Mr. Gibson points out that
2 as a last resort we could apply the Department of Labour
3 Act which gives us the general power to make orders
4 in an unsafe situation.

5 The question, though, of municipal
6 construction ----

7 THE COMMISSIONER: The reason I am going
8 into this, this goes without saying, this to a large
9 extent is outside of my jurisdiction on this Commission,
10 but as you are probably aware, Mr. Justice Roach made
11 a recommendation on the last occasion and certainly we
12 are asked to make them here that the Board be given
13 power not only to inspect but to enforce by proceeding
14 to lay a charge or by, if necessary, closing down an
15 operation. Well, now, that might come within my
16 jurisdiction. That is why I am interested.

17 MR. EBERLEE: May I express a personal
18 opinion and it is purely a personal opinion. Well, I
19 suppose government policy is what we have got today,
20 but I don't think that there would be any real advantage
21 in having these five areas which we enforce transferred
22 to the Compensation Board. I can see no real advantage,
23 in fact, I think there would be some disadvantages. The
24 Compensation Board is concerned with occupational
25 safety; we are concerned with occupational safety and
26 with an element of public safety as well. It might be
27 that a transfer of these functions would mean that
28 public safety would get less attention. The question of
29 fire escapes in buildings and all these other things
30 come under it as well.



1 It seems to me --- again a personal
2 opinion --- that the element of ministerial responsibi-
3 lity is an important one. I see no advantage in trans-
4 ferring these functions to an independent body. I think
5 that the element of flexibility would be lost. When
6 we are operating under the direction of our Minister
7 changes can be made in the regulations very quickly to
8 take care of a new situation. Once we move it from that
9 situation some of that flexibility would go out the
10 window.

11 Being perfectly practical, the Board would
12 still be faced or any other agency would still be faced
13 with the problem of large units, getting them to work
14 together --- really the same problem of coordination
15 that we face now would continue to exist.

16 MR. ESTEY: Let me get at it a different
17 way and perhaps in more detail and therefore probably
18 more easy to understand. Somebody is going to build a
19 factory, let us say, in the County of York. I take it
20 from Section 16 of the Industrial Safety Act that the
21 person needs in addition to any municipal building
22 permit the approval of the drawings from your department.

23 MR. EBERLEE: That is right.

24 MR. ESTEY: And whoever is administering
25 the safety regulations of necessity has to get in at that
26 early stage; otherwise you will find you have got a
27 factory built with some feature in it which is either
28 hazardous from a construction viewpoint or is hazardous
29 from an industrial process viewpoint or from the general
30 public safety viewpoint.



1 You need that kind of power and it would
2 have to be, as you put it, in the executive branch for
3 greater facility and flexibility in both the creation of
4 the regulation and the amendment of the regulation from
5 time to time, and it is that kind of inspection at the
6 source that your department engages in, at least the
7 factory inspection branch. Now, the municipality
8 inspects that building as it goes up and I take it from
9 your comments that you also do that to see that the
10 building in fact follows the plans which the department
11 has approved. The municipality also inspects the
12 building as it goes up presumably to see that the
13 building permit which they issued is being obeyed and
14 not being extended or abused.

15 In the course of the actual construction
16 of the thing I take it the safety procedures which the
17 contractor must follow are also covered by your
18 construction safety division.

19 MR. EBERLEE: This is correct.

20 MR. ESTEY: Who take over from the
21 industrial safety for the phase of construction. Now,
22 while that construction is going on I take it that the
23 municipality inspects, the Workmen's Compensation Board
24 Safety Association might have some contact with it
25 because the contractor may be a member, probably is a
26 member, but I take it that during the construction phase
27 your department does not inspect as a routine the
28 construction techniques.

29 MR. EBERLEE: That is correct. I should
30 say that the question of municipal versus a more



1 centralized form of inspection under the Workmen's
2 Compensation Act is under review under the Department of
3 Labour Act looking for a review by the government at the
4 next session. As I say, I don't know what course will
5 be adopted, but that matter is under review.

6 MR. ESTEY: And then after the factory
7 has been built, now we have gone through two stages to
8 start with, the applying stage, the construction stage
9 and now I would like to get into the operating stage.
10 The factory is full of people and it has machinery there
11 which, of course, is inherently dangerous. You have, I
12 see, a great wealth of regulations covering the different
13 kinds of industrial operations and your inspectors from
14 time to time go through that factory and see whether or
15 not those regulations are being enforced.

16 MR. EBERLEE: That is correct.

17 MR. ESTEY: My specific question -- I am
18 looking for an illustration so we can have a meeting of
19 minds here: If the Workmen's Compensation Board have
20 been experiencing a lot of foot injuries around a
21 machine and their association, whatever the applicable
22 association is, think it would be a good idea to have
23 safety shoes, I take it that presently the association
24 or the Board or either or neither of them have the
25 power to make the man wear safety shoes, is that right?

26 MR. EBERLEE: They are obliged under the
27 Act. You see, in that type of situation we get the
28 accident reports, we get a copy of the accident reports
29 that go to the Compensation Board, so we will see the
30 incidence of foot injuries and our men will then go



1 out and enforce the section of our Act and regulations
2 which require this type of protection.

3 THE COMMISSIONER: You will try to
4 enforce it, but do your men ever lay charges against
5 individual employees because they don't wear safety
6 boots?

7 MR. EBERLEE: It might be that we would
8 be moving in that direction one of these days. We
9 certainly have not laid any charges to this point.

10 THE COMMISSIONER: I noticed when this
11 question was being reviewed in British Columbia one of
12 the recommendations that was made and one of the things
13 that was considered --- I think the Board in British
14 Columbia had the power to lay charges against employees
15 who failed to comply with safety regulations, but that
16 in 1959 they had given up doing it. They had had a
17 certain number prior to that time, but had had little
18 success before local magistrates who felt sorry for the
19 employee and it caused poor labour-management relations
20 and they had finally in 1959 given it up and I notice
21 in the Tysoe Report he agreed that it was not worth it.
22 But in any event, your safety organizations don't lay
23 charges or have not?

24 MR. EBERLEE: Under the Construction
25 Safety Act charges have been laid.

26 THE COMMISSIONER: They have been laid
27 against individual employees?

28 MR. EBERLEE: Yes, not under the
29 Industrial Safety Act ---

30 MR. ESTEY: That is the Construction



Nethercut & Young

Toronto, Ontario

1 Safety Act, that is covering the phase when they are
2 building the building.

3 MR. EBERLEE: Yes.

4 MR. ESTEY: Let me just ask you perhaps
5 a narrower question ---

6 THE COMMISSIONER: There I suppose they
7 might imperil a great many more people than themselves
8 by an employee failing to observe safety precautions.

9 MR. EBERLEE: I think the cases have
10 involved the wearing of safety hats or the non-wearing
11 of them.

12 MR. ESTEY: So you would charge the
13 workman who doesn't have a hat and who went into an
14 area saying, "Hats must be worn in this area".

15 MR. EBERLEE: We don't charge automatically.
16 Our approach is to gain compliance and then failing
17 compliance a charge is laid.

18 MR. ESTEY: I don't really mean to get
19 into the question of whether you should or should not
20 charge them, but I am trying to find out what can be
21 done when we find a great number of claims with respect
22 to the illustration I had with foot injuries. The
23 Workmen's Compensation Board, I take it, is powerless
24 when faced with this flood of claims or this type of
25 machinery to do more than put an extra assessment on
26 the employer.

27 MR. EBERLEE: Of course, they can advise
28 us that this situation exists and on the basis of our
29 working together we will go out and immediately enforce
30 the requirements of the Act.



1 MR. ESTEY: That is what I am getting at.
2 The Board itself can act and it has a liaison with the
3 department.

4 MR. EBERLEE: Yes.

5 MR. ESTEY: Let me examine for a moment
6 what this liaison consists of. Do you get a copy of all
7 claims allowed, a report on them, or do you get a copy
8 of all accident claims made to the Board?

9 MR. EBERLEE: We get a copy of all
10 accident reports made to the Board.

11 MR. ESTEY: By the workmen?

12 MR. EBERLEE: By the employer so that we
13 get the same notification that the Board gets.

14 MR. ESTEY: Where do you get that from?

15 MR. EBERLEE: From the employer.

16 MR. ESTEY: Will that be the form 7 or
17 8 that we have heard about?

18 MR. EBERLEE: Form 7.

19 MR. ESTEY: And one copy goes from the
20 employer direct to the Department of Labour?

21 MR. EBERLEE: Yes.

22 MR. ESTEY: Then does the Department of
23 Labour find out what the Board does with that claim?

24 MR. EBERLEE: No, we are interested in it
25 for the purposes of compliance with the regulations and
26 with the Act.

27 MR. ESTEY: I see at the bottom of that
28 form there is a long list of statutes all of which
29 appear in your brief --- Construction Hoists Act,
30 Elevators and Lifts Act, Industrial Safety Act,



1 Underground Work Regulations, the employer shall send a
2 copy of this report --- it says "shall send a similar
3 report to the Ontario Department of Labour and where
4 required by The Construction Safety Act a similar report
5 to the Construction Safety Inspector in the municipality
6 where the accident occurred". Is that one of your
7 employees?

8 MR. EBERLEE: No, that will be a
9 municipal employee.

10 MR. ESTEY: So you get a report when it
11 falls under The Construction Hoists Act, The Elevators
12 and Lifts Act, The Industrial Safety Act or the Under-
13 ground Work Regulations?

14 MR. EBERLEE: That is right.

15 MR. ESTEY: So I take it that would
16 cover ---

17 MR. EBERLEE: Certain types of
18 accidents, of course, must be reported under The
19 Construction Safety Act to us as well as to the
20 municipality.

21 MR. ESTEY: I was wondering: It seems
22 to me that that is in your brief, but I was wondering
23 why this form that the Board has does not require that,
24 doesn't say so. The employer would have to know the
25 statute in addition to this form. I think that is in
26 your Act.

27 MR. EBERLEE: I am sorry, it is in the
28 Act. The employer must give us notice and the statutes
29 say he may use this form.

30 MR. ESTEY: I am just wondering why the



1 form itself does not say that.

2 MR. EBERLEE: You are referring to the
3 Construction Safety Act?

4 MR. ESTEY: Yes. The strange thing
5 about it is, I don't know how important it is, but I
6 feel that the Board has designed this form to warn the
7 employers that they must send some reports under the
8 Construction Safety Act to the municipality, but there
9 is no mention that in some cases they must also send
10 a report to your department.

11 MR. EBERLEE: This is in the Act and in
12 the regulations.

13 MR. ESTEY: I know, I discovered it in the
14 Act, but I was just wondering why they don't put it on
15 that form.

16 MR. EBERLEE: Perhaps we should have.

17 MR. ESTEY: There is a presumption that
18 the employer knows the law which is not too sound a
19 presumption. In any event, in the industrial safety
20 field what you say is that there is a need for liaison
21 and the liaison in fact and in law established by reason
22 of the interlocking in the reporting system to the
23 Department of Labour and the Workmen's Compensation
24 Board.

25 MR. EBERLEE: Yes.

26 MR. ESTEY: But your interest in the
27 claims does not carry on to whether or not it is
28 compensable: Your interest is in how it happened.

29 MR. EBERLEE: Yes.

30 MR. ESTEY: And if any violation of the



1 Act or regulations occurred?

2 MR. EBERLEE: That is right.

3 MR. ESTEY: And if your inspectors find
4 that it did, then you carry forward with whatever is
5 necessary, whether prosecution or not.

6 I take it at the present time
7 the system of liaison based as it is on what we have just
8 described has worked out in a satisfactory fashion.

9 MR. EBERLEE: I think it would be foolish
10 for me to suggest that in the past liaison has been as
11 effective as it is today. This is one of our
12 endeavours today, to improve liaison, make it more
13 effective.

14 THE COMMISSIONER: Mr. Eberlee, when did
15 the Labour Safety Council of Ontario come into
16 existence?

17 MR. EBERLEE: It came into effect in
18 1961, December, 1961.

19 THE COMMISSIONER: It is a sort of an
20 overall effort to establish control?

21 MR. EBERLEE: It concerned itself
22 mainly with the Department of Labour and its statutes
23 and regulations, but since January of this year it has
24 been the Minister's policy that there should be a close
25 tying together of the efforts of our own branches and
26 the efforts of the Compensation Board and of the
27 accident prevention associations so that the Council
28 was reconstituted with representations from the
29 accident prevention associations and with union
30 representation, and this is to give a form of coordination



1 at the policy-making level.

2 THE COMMISSIONER: Prior to this year it
3 had not included union representatives, is that what
4 you say?

5 MR. EBERLEE: There have been a couple of
6 union representatives.

7 THE COMMISSIONER: But not the same number
8 as you have now?

9 MR. EBERLEE: Not to the same degree.
10 This is an effort to bring the accident prevention
11 associations and the employee representatives together
12 too. Then, at the operating level there is a formal
13 coordination between the Director of Safety and
14 Technical Services of our department and the Director
15 of the Safety Educational Department of the Compensation
16 Board and the Executive Director of the Labour Safety
17 Council.

18
19
20
21
22
23
24
25
26
27
28
29
30



/SS 1 THE COMMISSIONER: There is an Executive
2 Director of the Labour Safety Council?

3 MR. EBERLEE: That is correct. He does
4 not appear on that chart.

5 THE COMMISSIONER: He doesn't appear?

6 MR. EBERLEE: No.

7 THE COMMISSIONER: There is an Executive
8 Director of the Labour Safety Council who works with the
9 Director of Safety and Technical Services?

10 MR. EBERLEE: Yes.

11 THE COMMISSIONER: And with the
12 Director appointed by the Board to coordinate the
13 accident prevention associations?

14 MR. EBERLEE: Yes.

15 MR. ESTEY: Mr. Eberlee, I might put
16 one more question on this safety business before we get
17 into the Labour Safety Council. Of course, we have all
18 seen on television all these safety publicity announce-
19 ments which are designed, I take it, to encourage
20 safety practices, and we have heard that these are
21 financed by the safety operations within the Department
22 of Labour for a safety educational campaign or program
23 of the same general type as the Workmen's Compensation
24 Board associations.

25 MR. EBERLEE: No.

26 MR. ESTEY: The safety education is left
27 to these seven associations?

28 MR. EBERLEE: That is correct; except that
29 we do feel we have a responsibility to publicize the
30 existence and the nature of the statutes and the



1 regulations that we administer, because without that
2 public knowledge enforcement obviously doesn't work.

3 MR. ESTEY: How do you do that?

4 MR. EBERLEE: Well, through pamphlets,
5 brochures, speeches to employee groups, and so on, on
6 a whole range of techniques. Of course, we haven't been
7 into television and the advertising media.

8 MR. ESTEY: Is it fair to say that the
9 two programs could be described, first, in the case of
10 the safety associations it is designed to encourage
11 safety practices by the workmen and by the employer in
12 creating safe conditions, whereas the Department of
13 Labour program is designed to make the populace aware
14 of the fact that they have these safety regulations
15 both to enjoy and obey?

16 MR. EBERLEE: That is correct.

17 THE COMMISSIONER: There is one field
18 on safety work which hasn't appeared to come under your
19 department or the Workmen's Compensation Board, and that
20 is the Highway Traffic Act. I suppose that is considered
21 to be a public matter, wholly a public matter.

22 MR. EBERLEE: Yes, it is a mixture of
23 the public and the occupation; and I suppose in that
24 area it takes one agency concentrating on this one field,
25 beating its brains out to deal with that problem.

26 MR. ESTEY: That is a losing proposition,
27 and you don't want any part of it.

28 MR. EBERLEE: I didn't say that.

29 MR. ESTEY: We have the Highway Traffic
30 Act, the Highway Act, the Highway Improvement Act.



1 The Department of Mines has safety regulations to
2 administer and they are wholly separate from the
3 workmen's compensation field, I take it.

4 MR. EBERLEE: Yes.

5 MR. ESTEY: Would Lands and Forests
6 have the same kind of problems with respect to the
7 logging and pulp industry?

8 MR. EBERLEE: Yes.

9 MR. ESTEY: And wholly separate from the
10 Department of Labour and the Workmen's Compensation
11 Board.

12 MR. EBERLEE: That is correct.

13 MR. ESTEY: Would there be any others?

14 MR. EBERLEE: The Attorney General's
15 Department, through the Fire Marshal's Office.
16 The Department of Energy and Resources management
17 through these regulations pertaining to natural gas,
18 and so forth. Hydro.

19 MR. ESTEY: They have their safety
20 programs. In fact, you see their efforts on television
21 and newspapers also, don't you?

22 MR. EBERLEE: Yes.

23 MR. ESTEY: And it is wholly separate
24 from the Department of Labour and the Workmen's
25 Compensation Board?

26 MR. EBERLEE: Yes.

27 THE COMMISSIONER: Does the Workmen's
28 Compensation Board not, through their accident prevention
29 associations, deal with electrical matters?

30 MR. ESTEY: Yes, but I am saying that



1 the administration of Hydro's safety program is under
2 Hydro and apparently separate from the safety work done
3 by the Board with the associations. The Electrical
4 Contractors' Association would be the association there.
5 In the same way that the Department of Labour, I take it,
6 regulates this vast amount of regulations, statutes on
7 safety.

8 THE COMMISSIONER: Yes, the safety
9 regulations are contained in the various Acts, dealing
10 with lumber and dealing with mines.

11 MR. EBERLEE: The Loggers' Safety Act
12 started out with us. As a matter of fact, it was
13 drafted under the Minister of Labour and it was drafted
14 through the House, but then we came to the conclusion
15 that it was much better administratively that that be
16 under the Department of Lands and Forests, because their
17 people were covering the territory where that type of
18 work was done and their people were qualified to know
19 what was right and what was wrong in the safety field
20 in that particular area of work. I think this is a
21 tendency. Certainly the Department of Mines would be
22 far better qualified than we to administer the safety
23 aspects of The Mining Act. There would be duplication.
24 There must be a Department of Mines with certain
25 functions. If that area of safety were taken away from
26 the Department of Mines, we would have to have people
27 with mining engineering background, and so on, and I
28 think there would be more duplication under that type of
29 situation.

30 MR. ESTEY: So you have a good parallel,



1 I take it, in the Loggers' Safety Act and any of your
2 statutes in that the creation of the regulations and the
3 enforcement of the regulations is in the executive
4 branch, whereas there is a counterpart safety association
5 from the employers' group under the Workmen's
6 Compensation Board.

7 MR. EBERLEE: Yes.

8 MR. ESTEY: Completely parallel to what
9 you have.

10 MR. EBERLEE: Yes.

11 MR. ESTEY: On page 8, Mr. Eberlee, of
12 your brief you say that by mutual agreement, when some
13 of the Accident Prevention Counsellors in the field
14 detect a violation in one of the regulations or statutes
15 there is a notice sent from that counsellor to the
16 department and the department then carries on from there.

17 MR. EBERLEE: That is right.

18 MR. ESTEY: And therefore you say that
19 the liaison between the two agencies, instead of
20 creating an overlap or rivalry, is, in fact, complemen-
21 tary.

22 MR. EBERLEE: I wouldn't say that the
23 liaison is perfect and that our approach to it was
24 perfect, but there is today more liaison than there has
25 been in the past, and we think that this type of system
26 is effective.

27 MR. ESTEY: Before I leave that subject,
28 you see what the suggestion is in some quarters, that
29 this liaison might be perfected if the next step was
30 carried out, if the Board, who pays the compensation for



1 these injuries, had the power to enact a regulation to
2 meet what seems to be a recurring situation in that
3 particular industry and, secondly, if somebody didn't
4 obey this safety edict. In contrast to that today we
5 have the position where the employers are trying to
6 educate the employees, but must go to your department
7 to try and eliminate this deficiency.

8 MR. EBERLEE: Yes. Of course, I should
9 point out that the coordination here occurs in a sense
10 through the top level in that we are responsible to the
11 Minister of Labour, and the Compensation Board reports
12 through the Minister of Labour to the Legislature.

13 MR. ESTEY: That is a rather late meeting
14 at the top, whereas somebody has lost a finger down at
15 the bottom.

16 MR. EBERLEE: Yes. Although I must say
17 that I am not aware --- I wouldn't go back before 1961,
18 but I am not aware of any current situation where
19 safety is losing because someone in the Compensation
20 Board has to speak to someone in the Labour Department.

21 THE COMMISSIONER: Your theory is that
22 that is all he has to do, because your department is
23 more anxious than even the Board to make sure that all
24 relative safety measures are enforced and carried out.
25 On the other hand, I suppose that your department could
26 be also subject to pressure from people who are trying
27 to avoid undue expense. You told me in connection with
28 the Construction Safety Branch that in the event of a
29 municipality failing to act that there is an Act under
30 which you could commence some proceedings yourself.



1 What was that Act?

2 MR. EBERLEE: The Department of Labour Act.

3 THE COMMISSIONER: There is provision
4 in there which permits you to deal with it.

5 MR. EBERLEE: There is provision which
6 allows us to stop work, to issue any orders relating to
7 any unsafe situation which may arise within our whole
8 field of jurisdiction.

9 I would like to emphasize one thing ---
10 and this is only a personal opinion --- between the
11 Department of Labour and the Compensation Board. As far
12 as I am concerned, and I am sure as far as my colleagues
13 are concerned, it is whatever is the best system. We are
14 not empire builders.

15 MR. ESTEY: Just one last question on
16 that point. Does the Department maintain an officer
17 on the premises of the Compensation Board as a kind of
18 liaison, pipeline communication?

19 MR. EBERLEE: Not on the premises, but
20 there is close liaison between Mr. Draper, Director of
21 the Safety Education Department, who actually is the
22 official liaison man, and Mr. Gibson. There is contact
23 at all levels between our branch heads, and so on.

24 MR. ESTEY: If some condition arose
25 which was apparent to the Board first because they were
26 getting this flood of reports, then I take it this system
27 you have described to us is adequate in that the
28 department gets reports anyhow, they get a copy.

29 MR. EBERLEE: Yes.

30 MR. ESTEY: And without reference to the



1 safety associations, there is this liaison between the
2 Board and your department.

3 MR. EBERLEE: Yes.

4 MR. ESTEY: And if the Board feels they
5 are having to pay too much compensation in some specific
6 group of plants or plant and that the regulations are
7 not being enforced, does that information reach you
8 through Mr. Draper?

9 MR. EBERLEE: More likely I think it would
10 go from an officer of the Board at a lower level to the
11 Director of our Industrial Safety Branch or one of our
12 safety managers, or it might go from a man in the
13 district. After all, our inspectors are spotted all
14 over Ontario and there is contact between the man in the
15 Lakehead and the Department.

16 MR. ESTEY: The man at the Lakehead would
17 get the report from your headquarters?

18 MR. EBERLEE: Yes.

19 MR. ESTEY: Turning to the Labour
20 Safety Council of Ontario which you told us, in fact,
21 started in 1962, under the statute this consists of
22 three or more persons appointed by the Lieutenant-
23 Governor-in-Council, and you say now it consists of
24 seven, seven and the chairman.

25 MR. EBERLEE: Yes.

26 MR. ESTEY: Is that a part-time council
27 or a full-time council?

28 MR. EBERLEE: It is a part-time advisory
29 council.

30 MR. ESTEY: Are the members paid?



1 MR. EBERLEE: No. Their expenses are
2 paid, their expenses involved in attending meetings are
3 paid.

4 MR. ESTEY: Are the vacancies or appoint-
5 ments to the Board filled on the recommendation of
6 associations?

7 MR. EBERLEE: Yes, they are. It is
8 understood that the accident prevention associations
9 will supply a representative. In some cases it is the
10 current president, in others it is the past president.
11 In one case it is the first vice-president.

12 MR. ESTEY: How are the other seven
13 nominated?

14 MR. EBERLEE: They are nominated for that
15 new council by the Ontario Federation of Labour. They
16 were asked to supply names in these corresponding
17 categories and they did.

18 MR. ESTEY: How often does the council
19 meet?

20 MR. EBERLEE: The council has been
21 meeting roughly once every six weeks, and we have been
22 more frequent this fall. Three weeks ago we had a
23 regional meeting at the Lakehead, and we are having a
24 regional meeting in Kingston towards the end of
25 November. So through the fall we would be meeting an
26 average of once a month.

27 MR. ESTEY: I see in Section 5 it provides
28 for inquiring into and advising on any matter respecting
29 the safety of the worker, and it deals with existing
30 laws, enactment of new laws and coordination in the



1 function of various safety organizations. I take it that
2 at your monthly meetings the subjects discussed are
3 present situations and the possibility of extending
4 them as the position requires.

5 MR. EBERLEE: That is right. The
6 Council is also sponsoring a project which the University
7 of Toronto is undertaking into the underlying causes
8 of accidents.

9 THE COMMISSIONER: Psychology.

10 MR. EBERLEE: Yes, trying to get down
11 into that one area. That is one project which the
12 council is undertaking.

13 THE COMMISSIONER: What is the regional
14 meeting you are referring to?

15 MR. EBERLEE: The one at the Lakehead
16 was designed really to produce new ideas to the council,
17 the experience of people in the area. Union and
18 management people were invited to the conference, there
19 were panels, and a great many ideas came out of the
20 workshops.

21 THE COMMISSIONER: In other words, it
22 was a meeting of your Labour Safety Council, but you
23 invited people from management and labour?

24 MR. EBERLEE: Yes. We had roughly 200
25 people at that conference. We came back with a brief-
26 case full of ideas, the principal one being that there
27 should be greater coordination.

28 THE COMMISSIONER: Was anything said
29 there about the accident prevention associations?

30 MR. EBERLEE: No, not really.



1 THE COMMISSIONER: There have been
2 recommendations in previous reports, Mr. Justice Roach's
3 Report, there have been recommendations made to this
4 Commission that the accident prevention associations at
5 the lower level should have a representative of labour
6 on it.

7 MR. EBERLEE: Yes.

8 THE COMMISSIONER: You appear to have
9 done it with your Labour Safety Council.

10 MR. EBERLEE: That matter did come up,
11 that the principal concern of the various workshops
12 seemed to have been that there were too many agencies
13 engaged in the public safety field, these agencies we
14 have mentioned, and there are many others, that some
15 tying together of that area should be an objective.

16 MR. ESTEY: I take it that the Council
17 hasn't considered the proposal that the whole of the
18 safety regulation adoption and enforcement and safety
19 education should be under the same authority.

20 MR. EBERLEE: No, that is not a matter
21 that has been discussed.

22 THE COMMISSIONER: Mr. Estey, I take it
23 you will be some time.

24 MR. ESTEY: Yes.

25 THE COMMISSIONER: We will adjourn for
26 ten minutes.

27
28
29
30 ---Short Recess.



1 MR. ESTEY: Mr. Eberlee, we were talking
2 about this basic problem of co-ordination when we
3 adjourned and you are familiar, I am sure, with the
4 comments made by and before the Honourable Mr. Justice
5 Roach back in 1950, in which his Lordship said:

6 "My first criticism of the present system
7 is that it does not provide any means
8 which would ensure the active participa-
9 tion of labour in the work of accident
10 prevention".

11 That you have overcome, I take it, by the Constitution
12 of the Labour Safety Council?

13 MR. EBERLEE: Yes, that was the intention.

14 MR. ESTEY: On this he goes on:

15 "My second criticism is that the relationship between
16 the Board and the Association is much too remote" and
17 he deals with that at some length and then His Lordship
18 says:

19 "In my opinion/^{also}any completely organized
20 system for accident prevention requires
21 a code of accident prevention regulations
22 which shall constitute the minimum and for
23 the breach of which adequate penalties
24 may be imposed. I am in grave doubt as
25 to the meaning of Section 116 (2) of
26 the Act, that is to say, whether the 'rules'
27 there referred to include accident
28 prevention regulations or whether they
29 are limited/^{to}'rules' for the internal manage-
30 ment of the association."



1 His Lordship then concludes by saying:

2 "To overcome what I have stated
3 appear to me to be deficiencies in
4 the Act, I recommend the following be
5 added thereto."

6 and there is a long set of empowering provisions which
7 authorized the Board to investigate and establish regula-
8 tions, rules and to enforce the rules so established and
9 he concludes several pages of statutes and says:

10 "The foregoing sections I have taken from
11 the British Columbia Act."

12 I take it that when the amendment to the Act, to the
13 Department of Labour Act and to the Workmen's Compensation
14 Act were considered in the intervening periods of time
15 that these proposals were considered and except for
16 the establishment of the Council these proposals
17 have not been implemented, that is correct?

18 MR. EBERLEE: I believe that is correct.

19 MR. ESTEY: Do you happen to be familiar
20 with the practices in that connection by any of the other
21 provinces, other than British Columbia which we know
22 about?

23 MR. EBERLEE: Only in a most general way.
24 I believe all the western provinces do follow the same
25 practice as British Columbia and the provinces to the
26 east generally follow our type of approach.

27 MR. ESTEY: I take it that Ontario,
28 perhaps also Quebec, are the only two provinces, the only
29 major industrial provinces where this combina-
30 tion of authority might become unwieldy?



1 MR. EBERLEE: Yes, I would think that
2 would be true.

3 MR. ESTEY: Do you have any idea of the
4 cost paid out by your Department in any recent year for
5 the administration of these five divisions which you
6 have described in your brief?

7 MR. EBERLEE: Yes. The total cost, the
8 actual total cost in the fiscal year 1965-1966 was
9 \$1,905,171, and the cost for the current fiscal year,
10 the budget, is \$2,553,000. So it has come up, roughly,
11 \$650,000.

12 MR. ESTEY: About \$2,500,000 a year at
13 the present level of operation to administer the various
14 statutes which you have described in your brief?

15 MR. EBERLEE: Yes, that is right. I have
16 a breakdown here. Perhaps the Commissioner would like to
17 have it.

18 THE COMMISSIONER: The Board is spending
19 quite a lot more than that on their Safety Prevention
20 Association?

21 MR. EBERLEE: That is right.

22 MR. ESTEY: I take it that the costs
23 which you have given us and broken down would be a
24 necessary expenditure however those regulations are
25 administered?

26 MR. EBERLEE: I should think so, yes.

27 MR. ESTEY: There is no evident economy
28 of concentrating them in any other department?

29 MR. EBERLEE: No, in fact, there might
30 well be additional costs, because such information



1 programme as we do operate within our sphere is charged
2 up to another area, to our information branch and then
3 we have a field staff of apprenticeship counsellors and
4 of labour standards officers who act as spies as well
5 for unsafe conditions and report to these branches so,
6 in a sense, there are several staff members who could
7 well be charged, the time that they spend in that area.

8
9 ---EXHIBIT NO. 30: Breakdown of total costs by depart-
10 ment of Department of Labour.

11 MR. ESTEY: And I take it you would still
12 have some residual responsibility for which you need some
13 kind of a staff because of the involvement of public
14 safety as distinct from the safety of the individual
15 workman?

16 MR. EBERLEE: I am assuming that the
17 transfer of these functions would involve an occupational
18 safety aspect entirely. That is what the Compensation
19 Board is dealing in, its occupational safety.

20 MR. ESTEY: And that is all?

21 MR. EBERLEE: Presumably they would not
22 want to go beyond that area in enforcement or accident
23 prevention work so we would then be left with elevators,
24 boilers and so forth.

25 MR. ESTEY: I suppose you have touched
26 upon a good illustration of an overlap insofar as a
27 boiler is part of a production procedure in which case
28 the boiler would be of concern to both the Board and
29 the inspectors who have public safety in mind.

30 MR. EBERLEE: Yes, that is correct.



1 MR. ESTEY: Now, construction hoists,
2 of course, would fall into the occupational protection
3 whereas a freight elevator would have the overlap again?

4 MR. EBERLEE: Yes. Similarly, the
5 operating engineer aspect would have both. The Act
6 certainly is designed to protect the safety of the men
7 operating that equipment, but it is also designed to
8 protect the safety of the people up above the boiler
9 room.

10 MR. ESTEY: And I suppose that illustrates
11 something else, that the decision as to what the price
12 per square inch will be, or the size of the output will
13 be, will determine whether you need an attended boiler
14 or an unattended boiler and that would have to be made
15 once and for all by someone in the community so that you
16 don't have two standards, the Workmen's Compensation
17 Board having one standard and the Department of Labour
18 having another?

19 MR. EBERLEE: Yes.

20 MR. ESTEY: So, again, you would still
21 need liaison or something to avoid conflict or unnecessary
22 overlap?

23 MR. EBERLEE: Yes.

24 MR. ESTEY: This you say you eliminate
25 at the present time by confining the Board operation
26 to educational matters and putting everything else under
27 the executive branch?

28 MR. EBERLEE: Yes.

29 MR. ESTEY: Then, before we leave that,
30 I take it that whether or not all of these functions are



1 concentrated in the Board or in the executive branch
2 you still have the question, I take it, at times of a
3 rather intricate question, of the municipality's role,
4 particularly in construction?

5 MR. EBERLEE: Yes.

6 MR. ESTEY: Because there the municipality
7 has a twofold effort. One is to keep track of con-
8 struction with a view to assessment and the other is
9 to keep track of assessment for safety purposes but
10 generally the public safety.

11 MR. EBERLEE: Well no, the occupational.
12 Well - public but occupational safety too.

13 MR. ESTEY: Then I am wrong, I thought
14 perhaps the municipality's concern with that Union
15 Carbide building was that it would fall out on the street
16 rather than somebody running around the skeleton of the
17 building?

18 MR. EBERLEE: I suppose it is both.

19 MR. ESTEY: When you apply for a building
20 permit to the municipality, I suppose the primary test
21 is whether or not the building will stay up?

22 MR. EBERLEE: I believe so.

23 MR. ESTEY: Whereas your interest might
24 be at least equal to the safety of the people putting it
25 up?

26 MR. EBERLEE: Yes.

27 MR. ESTEY: And those people thereafter
28 working in it?

29 MR. EBERLEE: Yes.

30 MR. ESTEY: Then that takes me to one



1 last area of inter-relationship and that is the Research
2 and Industrial Health Section, Hygiene Section of the
3 Department of Health - I forget the name of it - do you
4 know what I am groping for?

5 MR. EBERLEE: Yes, Environmental Health
6 Branch.

7 MR. ESTEY: Is it Department or Division?

8 MR. EBERLEE: Branch.

9 MR. ESTEY: What is the relationship
10 between that organization and the Department of Labour?

11 MR. EBERLEE: They provide services for
12 us on a daily basis within their particular specialty.
13 There will be joint inspections, for example. One of
14 our men will go to a plant and he is not technically
15 qualified to pass judgment on certain aspects, so a
16 technician from that branch will accompany him. There
17 is this type of daily working together. There is working
18 together when the plans for a new building or a new plant
19 are brought in and there is some process that has implica-
20 tions beyond the implications that our people are speci-
21 fically qualified to deal with. So there is a lot of
22 working together.

23 MR. ESTEY: Has there been a discussion
24 in the Labour Safety Council or otherwise about moving
25 that branch into the Department of Labour?

26 MR. EBERLEE: No, there has not.

27 MR. ESTEY: And in the Department of
28 Labour, I take it, you don't have the technical staff in
29 the field that the Environmental Health people have so
30 that there is no duplication of that activity?



1 MR. EBERLEE: That is right.

2 MR. ESTEY: And I suppose that same kind
3 of liaison would be necessary whether this rather vast
4 array of safety regulations and administration organiza-
5 tion were moved into the Board or put into the Department
6 of Labour or someplace else?

7 MR. EBERLEE: Yes.

8 MR. ESTEY: Unless you were going to move
9 that Environmental Health Branch into the Board also and
10 I take it that that would be no more logical than moving
11 it into the Department of Labour?

12 MR. EBERLEE: Again, a personal opinion,
13 I would see very little advantage in it.

14 MR. ESTEY: Then, you have mentioned the
15 Department of Mines having safety regulations. I suppose
16 there is a certain amount of inter-relationship and
17 liaison between your Department and the Department of
18 Mines as to the administration and enforcement of these
19 safety regulations?

20 MR. EBERLEE: Yes, there is. There is
21 a pretty clear line, of course, that has been worked out
22 between our two departments as to the area that they
23 operate in and the area that we operate in.

24 MR. ESTEY: But, take a thing like
25 silicosis where you would have the involvement of the
26 Department of Mines and your department, the Environmental
27 Health and the Workmen's Compensation Board, you would
28 all four be interested in that?

29 MR. EBERLEE: Although if it was in the
30 mine itself, we would not become involved. That would



1 be the Department of Health, the Environmental Health
2 Branch and the Compensation Board.

3 MR. ESTEY: If it occurred in a factory
4 or someone cutting tombstones, it would fall under your
5 jurisdiction?

6 MR. EBERLEE: Yes.
outside

7 MR. ESTEY: So, /of a mine dealing with
8 silicosos, it would involve all four agencies I have
9 described?

10 MR. EBERLEE: Right.

11 MR. ESTEY: Do I understand it correctly
12 that the only department of government represented on
13 that Labour Council is the Department of Labour, not-
14 withstanding the interest of two other departments and
15 that kind of thing?

16 MR. EBERLEE: That is correct.

17 MR. ESTEY: And that these other areas,
18 mines and logging and pulp industry, their interest is
19 brought to the Council through the appropriate safety
20 association?

21 MR. EBERLEE: That is right. This is a
22 problem.

23 THE COMMISSIONER: When an Act provides
24 for medical inspections, as the Act under which the
25 caisson work is carried on does, whose duty is it to
26 see that those inspections are carried out or carried
27 out properly?

28 MR. EBERLEE: That Act is administered by
29 our Department.

30 THE COMMISSIONER: The Department of



1 Labour?

2 MR. EBERLEE: Yes.

3 THE COMMISSIONER: Well, probably whoever
4 you have here in charge of that can tell us about that
5 because there has been a point raised here and while you
6 are here I would like to hear what you have to say about
7 it in regard to the adequacy of the medical inspections
8 which have been held.

9 MR. McNAIR: Mr. Commissioner --

10 THE COMMISSIONER: Again, I may be out-
11 side of my field, but we have been told that the purpose
12 in bringing it before us was that there was a suggestion
13 that it was increasing the amount of claims reaching the
14 Board because the medical examination had not been
15 adequate, so I don't know at the moment whether it is
16 in my field or not, but I would like to hear what you
17 say.

18 MR. EBERLEE: Could I make a comment here?
19 Since the new underground regulations went into effect in
20 1963, I don't think - I read some sections of the brief
21 and some of the comments in that brief related to con-
22 ditions before the new regulations went into existence
23 but I think it can fairly be said that the situation has
24 changed quite considerably since the new regulations went
25 into effect.

26 In the fiscal year that ended the 31st
27 of March, 1966, for example, there were no cases of the
28 bends reported to the Department.

29 THE COMMISSIONER: 1966?

30 MR. EBERLEE: Yes, the fiscal year which



1 ended the 31st of March, no cases of the bends reported.

2 We have a complement of four inspectors
3 in this area. There is one vacancy at the present time
4 so there are three inspectors operating, one vacancy we
5 are attempting to fill. At any one time under compressed
6 air, I don't suppose we have more than ten or twelve
7 projects going, so we think that there is pretty good
8 inspection coverage. Mr. Gibson says four or five. I
9 was exaggerating. So, we think we have pretty good
10 inspection coverage.

11 THE COMMISSIONER: Does inspection coverage
12 cover medicals?

13 MR. EBERLEE: In that area, the regulations
14 require the project operators, of course, to have a
15 medical doctor. I don't suppose that we could set
16 ourselves up as inspectors of what the medical men do.
17 They, after all, are professionals and they know the
18 method and so on.

19 THE COMMISSIONER: I think the people
20 chiefly --

21 MR. EBERLEE: I am aware of the complaint
22 that twenty men will go through in half an hour, but I
23 don't think we have any records of that type of situa-
24 tion, but perhaps Mr. McNair could comment on that.

25 MR. McNAIR: Since the new regulations
26 came into force, there have been only two projects which
27 have had this number of people involved in them.

28 MR. ESTEY: What would they be?

29 MR. McNAIR: One was the subway. Other-
30 wise, the people involved are usually between twelve and



1 fifteen.

2 THE COMMISSIONER: So you feel you have
3 adequate inspection?

4 MR. EBERLEE: As I say, there is no
5 evidence of an alarming increase in cases of the bends.
6 There has been one, I think, in the last eighteen months -
7 one case of the bends and it was fairly recently. So
8 there are no symptoms of a lack of proper attention being
9 given by the medical people but, of course, we would be
10 very much concerned if this were the case.

11 THE COMMISSIONER: Will this resolve
12 itself into a question of whether or not other things
13 might develop from working under pressure?

14 MR. ESTEY: In one of the briefs in that
15 connection, there are two comments made - one you have
16 already dealt with, the medical examination. And the
17 other one is that the medical locks which are supposed
18 to be available are not always available. The brief
19 says:

20 "Although the regulation under the Depart-
21 ment of Labour Act requires it, these
22 chambers are not always available and
23 in some cases where they have been
24 available, have not been hooked up for
25 immediate use. Often employees and
26 public officials such as police and fire-
27 men have demonstrated total ignorance of
28 the need for or the use of decompression
29 chambers."

30 I take it that the regulations do require



1 those chambers and that the failure to have one ready
2 would be an offence?

3 MR. EBERLEE: That is right.

4 MR. ESTEY: And the Department of Labour
5 would, in the ordinary course of its enforcement, prose-
6 cute the person who did not obey that regulation?

7 MR. EBERLEE: That is right.

8 MR. ESTEY: And that you only have one
9 case of the bends in the last eighteen months?

10 MR. EBERLEE: Yes, that we have had
11 reported to us.

12 THE COMMISSIONER: Does that chamber have
13 to be available on the job or is this one that is avail-
14 able at the Toronto General Hospital adequate?

15 MR. EBERLEE: It must be available on
16 the job, before the men go on the job it must be there.
17 As I say, one can't always be 100 percent sure in the
18 area of enforcement, but we have no records in the last
19 eighteen months of these things not being available and
20 not being hooked up. Nobody has complained to us about
21 that. Our men can't be on a site twenty-four hours a day,
22 so it is possible that this could be the case but nobody
23 has drawn it to our attention. We would hope that it
24 would be drawn to our attention as soon as it happened
25 and if it were drawn to our attention something would be
26 done about it.

27 MR. ESTEY: Well, let me ask you, so that
28 we can understand the practicality of this thing: In
29 the TTC Subway, for example, where they work under
30 pressure they, I take it, have to get some kind of a



1 permit or authority from your Department before they
2 start so that you will know that job is underway?

3 MR. EBERLEE: That is right.

4 MR. ESTEY: And also, the municipality,
5 I suppose, has inspectors in connection with construction
6 of that subway?

7 MR. EBERLEE: No, the compressed air
8 job is our responsibility.

9 MR. ESTEY: It is wholly provincial?

10 MR. EBERLEE: Yes.

11 MR. ESTEY: So there is no problem there
12 of other people sticking their nose in: It is entirely
13 under the Department of Labour?

14 MR. EBERLEE: Yes.

15 MR. ESTEY: And I take it the Workmen's
16 Compensation Board have no immediate interest in the
17 project other than to investigate claims made, if any
18 are made in the course of the project?

19 MR. EBERLEE: Yes, that is right.

20 MR. ESTEY: And as this job goes along
21 you have a routine or a pattern of inspection, you have
22 a start-up inspection to see that they have the proper
23 equipment around and then you have an inspection period-
24 ically throughout the project?

25 MR. EBERLEE: Perhaps Mr. McNair could
26 elaborate on that.

27 MR. McNAIR: Our projects under the
28 regulations whether they are projects or not, I must be
29 given notice as the chief officer of this project before
30 they start. That is, all projects under the underground



1 regulations there must be instructions given to the
2 Safety Regulation Branch prior to the project beginning.
3 In the case of projects which are under compressed air
4 as a part of administrative policy, the contractor in-
5 volved is required to come to my office and to discuss
6 all the sections of the regulations dealing with com-
7 pressed air. At that time, it is indicated to him that
8 he must have a doctor who has been appointed as a
9 medical physician, notify us that he has been appointed,
10 not merely to carry out medical examinations but to
11 carry out all the responsibilities which the regulations
12 place upon him. In addition, he is required to supply
13 us with copies of notices which he sends to the Chief of
14 Police, the police authority, the nearest hospital and
15 the fire department, informing them that a project under
16 compressed air is going to go into operation.

17 When this notice comes to us and this
18 information, we notify the Environmental Health Branch
19 who advise the doctor, send him out copies of the data
20 sheets which I believe Dr. Mastromatteo referred to
21 previously, informing him as to the type of examination
22 that should be done. Then, prior to the workmen actually
23 being allowed to go into compressed air, the site is
24 examined by an inspector and at that time it is ascertained
25 that the medical lock is connected up and is in operation
26 on the project.

27 Now, since 1963, it has been a require-
28 ment that a medical lock be installed on every project,
29 no matter what the pressure was. Prior to 1963, there
30 was no requirement to have a medical lock until the



1 pressure reached 17 pounds. That is a brief description.

2 MR. ESTEY: Where would the standards
3 come from for the number of pounds requiring a medical
4 lock or requiring a certain time of decompression?

5 MR. McNAIR: Well, this is on the advice
6 of the medical people.

7 MR. ESTEY: That comes from the Environ-
8 mental Branch of the Department of Health?

9 MR. McNAIR: Yes, after looking into
10 all the other advice throughout the world.

11 MR. ESTEY: Did you have any discussions
12 with the Workmen's Compensation Board about those limits,
13 time or pressure limits?

14 MR. GIBSON: Purely on the advice of
15 the Industrial Hygiene Division, then, they are our
16 liaison with the Workmen's Compensation Board in all
17 matters medical; in other words, their doctor also
18 sits on Boards of the Workmen's Compensation Board.

19 MR. ESTEY: I asked the question because
20 we heard that the Workmen's Compensation Board had,
21 somewhere along the line, undertaken some research into
22 this whole field and I wondered what the link, if any,
23 was between the results of that research made known to
24 the Board and your Department of Health and Labour
25 Regulations. It may be that it is not finished.

26 MR. EBERLEE: It is not finished yet,
27 no.

28 MR. ESTEY: So you people are aware of
29 the fact that it is going on and I take it that you are
30 because of your liaison with the medical director at the



1 Workmen's Compensation Board?

2 MR. EBERLEE: This work, I think,
3 began following the installation of a lock at the
4 Toronto General Hospital which was financed by the
5 Compensation Board and we were involved in the planning
6 which led to that thing being done.

7 MR. ESTEY: That is a treatment facility
8 at the Toronto General for the decompression of patients?

9 MR. EBERLEE: Yes, and that is the site
10 of this research as well. We were involved in planning
11 for the installation of the research project and so on.

12 THE COMMISSIONER: Do your inspectors
13 check on the amount of pressure under which people are
14 working when they go below?

15 MR. McNAIR: Yes, there is also a
16 recorded gauge which records the pressure during the
17 twenty-four hours of each day.

18 THE COMMISSIONER: And do you have a
19 maximum under which people shall work?

20 MR. McNAIR: Yes, it is all laid out in
21 the regulations. The maximum is 50 pounds, but, so far,
22 we have never been up close to that. That is since the
23 new regulations came into force. I think the highest
24 would be somewhere in the order of 32 pounds.

25 MR. ESTEY: Those are pounds of pressure
26 in excess of normal atmospheric pressure?

27 MR. McNAIR: Yes, pounds per square inch
28 gauge.

29 MR. ESTEY: I take it that the principal
30 agencies involved in this question of caisson disease



1 and the supervision of caisson work have been discussed
2 in the Department of Mines, for example, are not under-
3 stood in regulations of workmen under pressure?

4 MR. EBERLEE: Mr. Gibson advises me
5 that if there is any work in a mine being done under
6 pressure, we provide a service to the Department of
7 Mines, a system.

8 MR. ESTEY: That is because they don't
9 have the frequency of use that warrants their own
10 apparatus to handle it, I take it?

11 MR. EBERLEE: Yes, Mr. Gibson says one
12 salt mine at Windsor.

13 MR. ESTEY: So, Mr. Eberlee, or one
14 of your colleagues, could you tell us while there are
15 only two apparent projects now involving work under
16 pressure over a period of three or four years, is there
17 a fair flow of this kind of work, or is it unusual?

18 MR. McNAIR: We have four or five a
19 year. A maximum number under compressed air at any one
20 time is probably four or five. In the fiscal year 1965,
21 there were twelve projects altogether. Since 1963,
22 there are somewhere around twenty-seven projects that
23 have been in operation.

24 MR. ESTEY: And how many inspectors do
25 you have on this part of your work?

26 MR. McNAIR: There are four inspectors
27 of caisson's.

28 MR. ESTEY: Is that all they do?

29 MR. McNAIR: No, they do the projects
30 which are not under compressed air also.



1 MR. ESTEY: But they happen to have the
2 training which qualifies them to do this kind of work?

3 MR. McNAIR: That is correct.

4 THE COMMISSIONER: How about the speed
5 with which you can get some action? Supposing an in-
6 spector reports that there is some unsafe practice and
7 makes a report to the employer, what happens?

8 MR. EBERLEE: Actually, he leaves a
9 written direction with the employer that the thing be
10 corrected. Sometimes it may be a fairly large project,
11 so he will put on a time limit. Sometimes it is
12 immediately, sometimes it is corrected while he is on
13 the scene. In most cases it is.. Where it is going
14 to take a fair bit of work and he does leave a time
15 limit then his report goes to the head office for follow-
16 up.

17 THE COMMISSIONER: He has means of getting
18 prompt action if it is something that calls for prompt
19 action, has he?

20 MR. EBERLEE: Yes.

21 THE COMMISSIONER: I notice in Mr. Justice
22 Roach's report he talked about giving the Board power to
23 lay down safety principles and to close up an operation
24 if they weren't observed. Those powers lie in your
25 Department now?

26 MR. EBERLEE: Yes, they do.

27 THE COMMISSIONER: Whether they were
28 there at the time when Mr. Justice Roach made his report
29 in 1950 or not, I don't know.

30 MR. EBERLEE: I think they were. Of



1 course the Construction Safety Act did not exist at
2 that time.

3 THE COMMISSIONER: And there was not the
4 same co-ordination either?

5 MR. EBERLEE: That is right.

6 MR. ESTEY: Does the man on the job, the
7 inspector on the site have that power to close the project
8 down if necessary?

9 MR. EBERLEE: Yes.

10 MR. ESTEY: He doesn't have to go back
11 up the ladder to get approval?

12 MR. McNAIR: The job doesn't start until
13 the medical lock is there.

14 MR. ESTEY: I had in mind someone
15 spiriting away and if an inspector found that he could
16 shut it down.

17 MR. McNAIR: This is something you don't
18 instal overnight. It is a matter of waiting.

19 MR. ESTEY: Do the regulations require
20 any particular experience on the part of the employer
21 before he can operate a job under pressure?

22 MR. McNAIR: There is a requirement in
23 one of the regulations that there must be a competent
24 superintendent who is well knowledgeable in the operation
25 of compressed air projects.

26 MR. ESTEY: Do you inspect those like
27 you do the welders in the boiler factories?

28 MR. McNAIR: No. It is a very personal
29 relationship.

30 MR. ESTEY: You know who they are?



1 MR. McNAIR: Yes, we are dealing here,
2 as I say, with probably in the region of 12 or 15 con-
3 tractors at the very most and, similarly, the same
4 number of superintendents. So these people are well-
5 known to us and their experience in the past.

6 MR. ESTEY: Turning away from that
7 specific problem, do you have any records or plotting
8 device in the Department of Labour that you rack up
9 on some graph or other portrayal on the incidence of
10 accidents as you get them on the Form 7 report?

11 MR. EBERLEE: Yes, we do. Mr. Yoneyama,
12 for example, of the Industrial Safety Branch keeps track
13 of these things. We are working with the Compensation
14 Board at the present time towards certain statistical
15 reports and so forth which they would be able to give
16 us from these records.

17 MR. ESTEY: I was wondering what you did
18 with Form 7 when it came in the mail. What do you do
19 with it?

20 MR. EBERLEE: Could I ask Mr. Yoneyama
21 to go into detail on this?

22 MR. YONEYAMA: We have the managers for
23 the four regions review them very carefully, and if, in
24 the opinion (I will put it this way) of the manager
25 reviewing the report it requires further investigation,
26 we will despatch our district man, either call him by
27 telephone or tell him, to forward the information
28 subsequently and have a complete report sent back to
29 us to determine whether or not such an accident can be
30 stopped either in the same place or with some other



1 firms in the same industry.

2 MR. ESTEY: I had in mind two different
3 kinds of frequencies. One is the frequency at the place
4 of employment, the high incidence of accident, and the
5 second is the stream of reports of which we have some
6 almost half a million a year now indicating that there
7 is a process which has become dangerous. Do you have
8 a recording system which will ferret out of that stream
9 of reports those two conclusions? And who is going to
10 do it, the Board or the Department?

11 MR. EBERLEE: Well, the understanding is
12 that the Board will develop these trend statistics for
13 us. As I say, we have been working with them for some
14 time now on this.

15 MR. ESTEY: Obviously, the Board will
16 pick out the employer because they extra rate the ones
17 which are hazardous and all you have to do is follow
18 their recording procedure to find out without duplicating
19 it?

20 MR. EBERLEE: Yes.

21 MR. ESTEY: And then the other kind of
22 accident which may become repetitive would be something
23 not related to an individual employer but would be rela-
24 ted to, perhaps, an industrial process which is new and
25 been introduced by any number of employers. I take it
26 that you rely again on the Board, perhaps "rely" is not
27 the right word - you don't double-team the Board by
28 setting up your own statistical programme. What you
29 are saying is you are tightening your linkage with the
30 Board to avail yourself of their records.



1 MR. EBERLEE: That is right.

2 MR. ESTEY: Their computer and the con-
3 clusion that it spits out.

4 MR. EBERLEE: That is right.

5 MR. ESTEY: And I take it from what you
6 say that you have found that this allows the Department
7 of Labour to get on to a problem as quickly as though
8 the whole of this were duplicated in your own set-up?

9 MR. EBERLEE: Yes, we make use of those
10 reports as they come in for day to day pinpointing of
11 trouble spots.

12 MR. ESTEY: And the trends you get from
13 their trend reports?

14 MR. EBERLEE: We will get, yes.

15 MR. ESTEY: As you set this system up?

16 MR. EBERLEE: Yes.

17 MR. ESTEY: One last topic I would like
18 to find out something about. I take it that you have no
19 records or experience with the Workmen's Compensation
20 Board asking your Department to invoke its executive
21 powers to enforce safety practices by workmen, either
22 the wearing of helmets or shields on their eyes, or ear
23 protectors in noisy circumstances: You have no record
24 of the Board asking for this particular kind of action
25 where they can't get it by persuasion?

26 MR. EBERLEE: I know from personal
27 experience Mr. Yoneyama has mentioned to me that the
28 Board has advised him that such and such a firm are
29 having problems with hats or goggles or shoes. As
30 a result, he has gone in and developed a programme for



1 that particular protective equipment.

2 MR. ESTEY: Is that at the inspiration of
3 the Board or does that come from the Union or the
4 employer?

5 MR. EBERLEE: That has come from the
6 Board, that has come from the safety associations, from
7 the Unions, from our own inspections. That sort of
8 thing could come from any source.

9 MR. ESTEY: I take it from going through
10 your records, your regulations which are voluminous,
11 that your Department on occasion must be required to
12 prosecute employers because their employees don't follow
13 the safety patterns laid down by the regulations, right?

14 MR. EBERLEE: Yes, that is right.

15 MR. ESTEY: What happens in the case
16 where the employer says, "Well, I put up the signs and
17 I make all this equipment available and the men won't
18 wear it". Do you still prosecute the employer for the
19 violation of the regulations or do you prosecute the
20 workmen who won't wear the glasses?

21 MR. EBERLEE: We have not had occasion
22 to prosecute the individual although, as I say, I
23 suppose that is something that might have to develop in
24 time.

25 MR. ESTEY: I asked the question because
26 the Workmen's Compensation Board's weapons are all
27 directed at the employer. They say, "If your record
28 continues like this we will double your assessment".

29 MR. EBERLEE: Of course, in the final
30 analysis, all of this is a problem of supervision and



1 in the final analysis it really is management's respon-
2 sibility. I think our regulations make it quite clear
3 that it is management's responsibility although they also
4 say that it is the workman's duty to make use of those
5 protective devices.

6 THE COMMISSIONER: It is management's
7 responsibility to do what it can, but it has to be a co-
8 operative effort?

9 MR. EBERLEE: That is right.

10 THE COMMISSIONER: And the management
11 must have the co-operation of labour in these safety
12 measures and that is one of the criticisms that have
13 been raised on the composition of the Accident Prevention
14 Associations?

15 MR. EBERLEE: Yes.

16 THE COMMISSIONER: Obviously, you can't
17 legislate people on the individual level into taking
18 safety measures?

19 MR. EBERLEE: There have been cases
20 where our inspectors have left instructions that safety
21 boots or something like that are to be worn. The company
22 has proceeded to comply with those instructions but has
23 encountered some opposition from individual workmen and
24 they have sent an S.O.S. back to our Branch and the result
25 is that one of our men will go in there and, in effect,
26 engage in a job of persuasion.

27 MR. ESTEY: I put the question to you
28 because we have heard and perhaps will hear more of the
29 employers say that their assessment is doubled or sub-
30 stantially increased because their record is bad and the



1 record is bad because they can't, by persuasion, get the
2 employees to avail themselves of safety devices and
3 apparel. On the other hand, they are faced with these
4 voluminous regulations as to how the plant will be run
5 and, again, it is the employer who bears the brunt of
6 the corrective measures whether or not it is ultimately
7 the employee who will not abide by the regulations. So
8 you have coming down the board side the fiscal penalty
9 and coming down the other side you have a prosecution
10 penalty?

11 MR. EBERLEE: Yes.

12 MR. ESTEY: And that, I take it, is
13 going to be witnessed whether or not the same agency
14 administers both the fund or the regulations or whether
15 it is split the way it is now?

16 MR. EBERLEE: I think so, yes.

17 MR. ESTEY: Thank you, Mr. Eberlee.

18 THE COMMISSIONER: Perhaps, Mr. Eberlee,
19 while you are here on occasion, we offer those present
20 representing the different organizations who have made
21 submissions an opportunity to ask some questions. We
22 are just starting on this part of our inquiry and, as
23 a consequence, it might be that there would have been
24 some questions that we would have had, had we heard you
25 at the end rather than at the start, but we have to
26 start somewhere. I wonder if anybody here has any
27 questions they would like to put to Mr. Eberlee before
28 he leaves?

29 MR. GALLAGHER: In the remarks just made
30 on the question, Mr. Eberlee, as to the incidence you



1 have with regard to men wearing boots and that kind of
2 thing, that you laid the regulations down and it is very
3 often the responsibility of the employee on the job,
4 I would like to get the point clear on that. Is it not
5 in the Act that management is responsible and that if a
6 man does not wear boots, for example, or wear glasses
7 or whatever protective clothing may be required, is it
8 not the responsibility of management to discipline this
9 man, to fire him?

10 THE COMMISSIONER: Do you say, Mr.
11 Gallagher, that that is in the Act, that management has
12 the right to fire him for failure to observe safety
13 regulations?

14 MR. GALLAGHER: Management has the
15 right to discipline at any time.

16 THE COMMISSIONER: The Labourers' Union
17 would not object to it?

18 MR. GALLAGHER: They would only object
19 as far as our collective agreement is concerned if the
20 man was improperly fired, but it certainly would not
21 object to firing a man who will not carry out the in-
22 structions of management with regard to safety. On one
23 occasion the company which was building the subway was
24 brought down before the Compensation Board to explain
25 or to go into the reasons why there was such a frequency
26 of accidents and the management informed the Compensation
27 Board at the time that every time they disciplined some-
28 body on the job that Jerry Gallagher of the Labourers'
29 Union had them reinstated again. The Compensation Board
30 found that very strange to understand since they had



1 had representations from us about accidents and they
2 brought me down which was unprecedented and asked me
3 what I would do in the case of a man, for example, who
4 would take a fire extinguisher and play-act on the job
5 and spray one of his workmates and thereby leave the
6 extinguisher empty and I stated I would have no hesita-
7 tion whatsoever if I happened to walk on to the job and
8 saw one of our men doing that, of going to the management
9 and saying, "Please fire the man".

10 THE COMMISSIONER: What is your question,
11 Mr. Gallagher?

12 MR. GALLAGHER: The point of the question
13 is that very often we hear that 80 percent of accidents
14 and so on are really the employees' fault.

15 THE COMMISSIONER: I think it says 80
16 percent here.

17 MR. GALLAGHER: I don't go along with
18 that, that 80 percent are the employees' fault; they
19 cannot be. This is an impossible, stupid statement to
20 make because management should fire them if they don't
21 obey the rules.

22 THE COMMISSIONER: It is not really a
23 question, then?

24 MR. GALLAGHER: I was asking a question
25 of Mr. Eberlee, and I have appeared before him but I
26 know these statements are not true.

27 THE COMMISSIONER: But what is your
28 question to Mr. Eberlee. You will have an opportunity,
29 Mr. Gallagher, of saying what you want later on but is
30 there anything in connection with this testimony here



1 that is not clear or that you want to have clarified?

2 MR. GALLAGHER: Well, I asked a question
3 on similar grounds about John McGeehan in the famous
4 bends case, if it is stated that it is absolutely
5 required by Mr. McNair who just stated that it was
6 absolutely necessary to have a medical lock on the job,
7 if this is so, why did they take McGeehan to Buffalo
8 and make a disgrace of Toronto and Ontario?

9 MR. EBERLEE: Could I answer that?

10 THE COMMISSIONER: Yes.

11 MR. EBERLEE: That case occurred before
12 the 1963 regulations were brought into force. That is
13 why that problem occurred. The regulations require a
14 medical lock to be on the scene and one would hope that
15 that type of confusion would never arise again.

16 MR. GALLAGHER: May I just say one more
17 thing. You are very kind, Mr. Commissioner. In the
18 medical examinations, we feel this is an extremely
19 important thing for the welfare of the people that we
20 represent, and the doctor, you felt, should not be inter-
21 fered with at all, that it was up to him, he was the
22 expert to say whether that man was fit or not. Only in
23 the case of a man with a hole in his heart dying on
24 Coxwell Avenue, we feel that is it not right and proper
25 that the Department should, as well as inspecting the
26 companies, also inspect the doctors?

27 MR. EBERLEE: I think up to a point,
28 yes. I don't know that we can set ourselves up to be
29 inspectors of medical men. They do have certain qualifi-
30 cations, there are agencies that police the profession



1 and so on, but I would say that if we found out that
2 some doctor had been appointed as the project doctor
3 and he was not, in fact, examining these men, we would
4 certainly want to correct that situation.

5 MR. GALLAGHER: Is this doctor appointed
6 by the Compensation Board or the Department of Labour?

7 MR. EBERLEE: This doctor is appointed
8 by the project.

9 MR. GALLAGHER: He is a company doctor?

10 MR. EBERLEE: Yes.

11 THE COMMISSIONER: The only doctors
12 appointed by the Workmen's Compensation Board are those
13 in connection with silicosis examination.

14 MR. GALLAGHER: We think that might be
15 a very good idea too and we approve of that and think
16 it is wonderful. One more question and then I will sit
17 down. Is it not true that, you answered me a question
18 a few moments ago when we had a break, that the cases
19 of the bends are only so many - one, three, five, a very
20 small figure. We say and we can produce evidence to
21 back it up that this may sound all right on paper but,
22 in actual fact, the bends cases are not reported as
23 accidents. If a man suffers the bends, he goes back
24 into the decompression chamber and he is put in there
25 for the required amount of time and released and goes
26 home again and yet he has been under the pressure, he
27 has had the bends, it is not recorded as an accident, so
28 the figures look pretty good from statistics but in
29 human life it is pretty bad.

30 MR. EBERLEE: I would not suggest that



Nethercut & Young

Toronto, Ontario

2146

1 we should try to fob off on you any of our responsibility
2 for enforcing this type of accident. It is our respon-
3 sibility and we must carry out that responsibility
4 properly but if there are any cases of the bends which
5 you know about, I wish to goodness you would let us know
6 about them.



1 MR. GALLAGHER: Well, there are approx-
2 imately 250 cases being examined and show indications
3 of suffering from the bends. Perhaps it is not wise for
4 me to mention it.

5 MR. EBERLEE: Over what period?

6 MR. GALLAGHER: Over the last year.

7 MR. EBERLEE: Examined by whom?

8 MR. GALLAGHER: By Doctor Gamarra. If
9 anybody says no, I can bring members by the dozen up
10 here.

11 MR. McNAIR: I think there is a little
12 misunderstanding of the terms of reference here. When
13 we speak of the bends, we mean caisson disease, which
14 happens to an individual who requires decompression. I
15 think what Mr. Gallagher is speaking about is something
16 regarding the incidence - I am not a medical man, but
17 I think it is called Asceptic Necrosis, which is not
18 necessarily an indication of having suffered the bends.

19 MR. GALLAGHER: You have got me there,
20 Mr. McNair.

21 MR. EBERLEE: If there are cases of bends
22 which our enforcement is not bringing to light, I wish
23 Mr. Gallagher would bring it to our attention.

24 THE COMMISSIONER: I think we should
25 leave it there, Mr. Gallagher. If there is anything
26 further you wish to say, you can do so in the next few
27 days.

28 MR. PIKE: First of all, Mr. Chairman,
29 I appreciate the opportunity of asking Mr. Eberlee a
30 few questions.



1 Mr. Eberlee, you earlier stated that
2 with your Department Inspectors going around with
3 municipal inspectors, you referred to them as watchdogs,
4 that when the municipal inspector gives an order to
5 comply, stop-work-order, or lays the charges, then a
6 copy of this order or report goes to the Department of
7 Labour. I understood you to say yes. There is no
8 duplicate of that order sent to the Department?

9 MR. EBERLEE: No.

10 MR. PIKE: At all?

11 MR. EBERLEE: No.

12 MR. PIKE: I thought you said yes. I
13 am sorry.

14 Now, the Department inspector going with
15 the municipal inspector, how often does he go to the
16 municipality and do this watchdogging?

17 MR. EBERLEE: In the last fiscal year,
18 there were a little over 3,000 joint inspections, and
19 there were something like 104,000 inspections altogether.

20 MR. PIKE: Does that include all 13
21 municipalities?

22 MR. EBERLEE: It includes all municipal-
23 ities in the province.

24 MR. PIKE: In the province?

25 MR. EBERLEE: Yes.

26 MR. PIKE: This would be how many times?
27 Once a month, once every two months, when the department
28 inspector goes around with the municipal inspector?

29 MR. EBERLEE: He is there at least once
30 a month. In addition, he runs seminars, this sort of



1 thing, in localities, and joint inspection is only one
2 contact with the municipal people.

3 MR. PIKE: One other thing on that, Mr.
4 Eberlee. You said in the case where a municipal in-
5 spector did not lay charges that the Department inspector
6 could lay a charge. Has it ever happened to your
7 knowledge, where the department inspector has laid
8 charges in doing this job?

9 MR. EBERLEE: Not that I know of. I
10 said if we got down into the kind of bind which you
11 mentioned, which is only a hypothetical situation, that
12 we could make use of the Department of Labour Act to
13 lay a charge.

14 MR. PIKE: But you have never done it?

15 MR. EBERLEE: No. We have never had to
16 do it.

17 MR. PIKE: I have a couple of questions
18 for Mr. McNair, too. One is the chart, the length of
19 time that the men are being compressed and the length
20 of time for decompression in compressed air. I am quite
21 familiar with it because I have worked with it. Are
22 these supposed to be kept in a locked box?

23 MR. McNAIR: Yes, it is.

24 MR. PIKE: It is kept by whom?

25 MR. McNAIR: It is an automatic recording
26 recorded by an automatic device. It is kept by the
27 contractor. In these days, it is kept on a separate
28 sheet.

29 MR. PIKE: I have experienced it in the
30 course of my own work in compressed air ---



1 MR. McNAIR: When was this?

2 MR. PIKE: In 1964, with this chart
3 kept in the box which was locked, was supposed to be
4 looked after by the maintenance mechanic on the job, to
5 my understanding, where this box had hardly ever been
6 locked. Quite often I have seen Department of Labour
7 inspectors come to the job and ask us why it hasn't been
8 locked, and they have not laid charges. I have seen
9 them taking the men out, decompressed the men and take
10 three minutes to decompress them when they should have
11 been decompressed for 12 minutes.

12 MR. McNAIR: I don't know how this could
13 happen with an automatic recording device. However, I
14 don't recall you ever having called me up to inform me
15 of this.

16 MR. PIKE: I was working on the job,
17 Mr. McNair.

18 MR. McNAIR: Surely you don't suggest
19 anything would happen from a conversation between you
20 and I.

21 MR. EBERLEE: In this area we don't
22 know anything unless people tell us. It is all very
23 well for people to stand up at a Royal Commission and
24 tell us this happens. Perhaps it did happen. If you
25 had told us at the time we could have put a stop to it.
26 I think it is every citizen's responsibility to report
27 to enforcement officers, to report something that is
28 going on that shouldn't be going on. We can't possibly
29 be at a site 24 hours a day 100 percent of the time; it
30 is absolutely impossible. If you have seen these things



1 occurring, Mr. Pike, please let us know so they can be
2 prevented.

3 THE COMMISSIONER: The opening up of
4 these questions was not to get into an argument. I
5 think it is to allow Mr. Eberlee and his associates to
6 state what their position is. I don't want this to
7 enter into a name-calling. Have you any further questions
8 you want to ask, Mr. Pike?

9 MR. EBERLEE: May I say that I think Mr.
10 Pike has been doing a very good job in this area. He
11 has been letting us know, but not on these parts.

12 MR. PIKE: I have seen several times
13 your inspector on the job seeing those boxes which are
14 supposed to be kept locked with the charts in them, and
15 sometimes the door is broken and off altogether, com-
16 pletely, and they do not lay charges. I have seen this.

17 THE COMMISSIONER: What difference would
18 it make if the door wasn't kept locked where the chart
19 is? I understand it is an automatic pencil keeping the
20 thing going.

21 MR. PIKE: Yes, Mr. Chairman. It is a
22 square box that it is in and it is supposed to be kept
23 locked. These charts - it is a round piece of paper
24 which goes into the machine and there is a hand which
25 takes the period of time it has taken to go in and go
26 out. If they are not kept locked, anybody can take the
27 chart out and change it. Even though the lock is kept
28 on it, I have seen them put the lock in when the men
29 are coming out, dump it out in three minutes and de-
30 compressing it when it is supposed to be decompressed in



1 the full time.

2 THE COMMISSIONER: The Department of
3 Labour representatives have heard this, and judging
4 from what Mr. Eberlee has said, there will be a check
5 made on it.

6 MR. PIKE: One final question I have,
7 Mr. Eberlee. To your knowledge, has the Department
8 ever checked how often a doctor visits the site on a
9 compressed air job?

10 MR. EBERLEE: I am afraid I haven't
11 that information. You will have to ask Mr. McNair.

12 MR. McNAIR: Again, as Mr. Eberlee said,
13 we are not on the job all the time. These men are pro-
14 fessional men and have advised us that they have read
15 the regulation and that they have been employed to carry
16 out all the responsibilities that have been placed upon
17 them by the regulation. Altogether, in Metropolitan
18 Toronto, we are talking about four doctors, since the
19 new regulations came into force, and I have every con-
20 fidence that these men are carrying out their duties in
21 a professional way. I think this is a matter for the
22 professional people to deal with.

23 THE COMMISSIONER: There must be an ex-
24 amination?

25 MR. EBERLEE: In a sense, the doctors
26 are part of the enforcement team.

27 MR. PIKE: The doctors on any job that
28 I have inspected are in private practice and can only
29 do a job once a week, and sometimes they can't do that.

30 MR. EBERLEE: Of course, they are being



1 paid for it. They are in private practice and they are
2 being paid.

3 MR. PIKE: Yes, and they haven't got the
4 time to spend on a compressed air job.

5 THE COMMISSIONER: They are not required
6 to be on the job all the time?

7 MR. PIKE: Once a day.

8 THE COMMISSIONER: Once again, if you
9 have information about that you should report it to the
10 Department so that something be done about it?

11 MR. PIKE: In cases of the bends or
12 medical cases of the bends, however you like to put it,
13 have you had any records at all sent into the Board
14 where people have a mild case of bends and they go into
15 a decompressed chamber for a period of an hour or two
16 hours in some cases and they are relieved of the bends
17 and they go back to work? Have you had any cases of
18 reports to the Board about that?

19 MR. McNAIR: The situation is that all
20 cases of bends must be reported to the Construction
21 Safety Branch. We not only require all cases of bends
22 to be reported to us, but each week there is mailed out
23 a postcard wherever there have been any cases of bends.
24 There is a postcard sent in every week from every project
25 informing us if there has been a case of bends. We supply
26 them, and they are pre-addressed and pre-stamped. It is
27 possible someone might forget to report a case of the
28 bends, so we remind them, although it is not in the
29 regulations as such, that they report each week whether
30 there have been cases of the bends. Now, the minute a



1 person has to be decompressed, this is a case of the
2 bends, caisson disease, and must be reported.

3 MR. PIKE: Fine. Thank you, Mr. McNair
4 and Mr. Eberlee, and thank you, Mr. Commissioner.

5 THE COMMISSIONER: Thank you, Mr. Pike.
6 Thank you very much, Mr. Eberlee.

7 MR. ESTEY: Mr. Commissioner, we have
8 with us today, Dr. Schisler of Chrysler (Canada) Limited,
9 to discuss a matter which is coming up in conjunction
10 with the safety matters which we have already started
11 this morning. Mr. Commissioner, you will recall that we
12 had planned to have rehabilitation, vocational training,
13 and so on, dealt with last week but, due to programming
14 difficulties, which you encountered in your court work,
15 this was put over to this week. Dr. Schisler is here
16 from Windsor and, with your permission, we would like
17 him to deal with vocational rehabilitation, and on behalf
18 of Motor Vehicle Manufacturers' Association, from whom
19 we heard already, Mr. Fair, who has been here before.

20 THE COMMISSIONER: Are we to hear from
21 the Federation of Labour and Mine, Mill, later on?

22 MR. ESTEY: Yes. That is what we have
23 right now. I know of nobody else who wishes to deal
24 with it in this way, and, therefore, having heard the
25 Doctor we probably would resume our schedule as to
26 accident prevention, and then it seems to me if somebody
27 wishes to do so, we can deal with this vocational re-
28 habilitation. So far, we haven't been able to find
29 anybody who is willing to do this.

30 MR. FAIR: My name is Russ Fair, of the



1 Motor Vehicle Manufacturers' Association. Dr. Schisler
2 is the Industrial Physician with Chrysler (Canada)
3 Limited for the past, approximately, two years.

4 DR. SCHISLER: I have been asked to
5 discuss and present some information concerning the
6 formal recognition of medically approved favouring work.

7 By favouring work, we mean such work or
8 duties that would be authorized by a qualified physician
9 which would be within the capabilities of the injured
10 workman and which would not aggravate or delay healing
11 of any injury.

12 THE COMMISSIONER: You are talking about
13 a man who is getting a pension for some partial disable-
14 ment, are you?

15 DR. SCHISLER: Not necessarily. The
16 workman has received an injury and, as yet, he has not
17 actually lost any time from his job, and now we have
18 to deal with this man and his injury as such.

19 Now, some basic facts peculiar to the
20 automotive industry should be kept in mind.

21 Firstly, most work in an automobile
22 assembly plant is not of the heavy labour type and some
23 work is extremely light, which is easily performed by
24 a man weighing 125 to 130 pounds.

25 Secondly, in a large operation such as
26 we have at Chrysler (Canada) in Windsor, there are men
27 who are working full time on light jobs, and these men
28 have chronic diseases, such as heart failure, diabetes,
29 hypertension and similar illnesses.

30 THE COMMISSIONER: You say they are



1 working full time on light jobs. You mean they were
2 given light jobs because of these injuries?

3 DR. SCHISLER: The light jobs evolved
4 as their condition became increasingly severe.

5 THE COMMISSIONER: In other words, these
6 injuries had developed on the job?

7 DR. SCHISLER: Not necessarily injuries,
8 no.

9 THE COMMISSIONER: These deficiencies?

10 DR. SCHISLER: Yes.

11 THE COMMISSIONER: Whereupon an employer
12 had them moved to lighter work?

13 DR. SCHISLER: These illnesses may not
14 come as a result of their job. For instance, diabetes,
15 heart failure.

16 THE COMMISSIONER: From what other
17 source they came, they were discovered on the job and
18 the employer found light work for them?

19 DR. SCHISLER: Yes. Now, these men,
20 because of their medical conditions, are subject to re-
21 current flair-ups or exacerbations and consequently
22 lose time from work, which makes their jobs available
23 on a temporary basis, for the injured man who requires
24 favouring.

25 Thirdly, in any large organization, and
26 certainly in the automotive industry, where a full-time
27 qualified medical doctor is in attendance, there are
28 pre-employment examinations.

29 THE COMMISSIONER: You say they have
30 temporary flair-ups?



1 DR. SCHISLER: These people, because of
2 their condition, will be sicker than the healthy pop-
3 ulation.

4 THE COMMISSIONER: And that is on a
5 temporary basis?

6 DR. SCHISLER: Yes, because when a man
7 recovers from his flair-up he is usually requested to
8 go back to his previous employment.

9 Now, during these examinations, some
10 minor abnormalities are detected in the prospective
11 employee. Many of these people are recommended for
12 hire because it is felt that their physical defects
13 are not severe enough to hinder them from performing
14 certain types of work. Most of these people who have
15 been hired in this group have done a very adequate job.

16 Now, industrial physicians are con-
17 tinually assessing and evaluating degrees of disability
18 with the man's job capability in mind, even before any
19 injury may have occurred to this man. In fact, this
20 added knowledge of the work environment, the nature of
21 the work itself and the man's physical and mental limi-
22 tations make an industrial physician most qualified in
23 assessing the degree of favouring work required when a
24 workman does have an injury. I will qualify that a little
25 later.

26 Along the same line, industrial physicians
27 working for a large firm are often asked to give an
28 opinion as to a man's medical capability of performing
29 a specific job when the man in question wishes to trans-
30 fer to another department. As you may imagine, there



1 are some illnesses that a man has that would make his
2 transfer to another department not practical or a
3 possible health hazard.

4 Now, industrial physicians again in this
5 respect are in an excellent position to assess the ex-
6 tent of the injury and the type of treatment; determine
7 whether favouring work should be offered; determine
8 whether the job offered can be performed by the workman
9 with his injury; determine by good medical judgment
10 that some injuries are best treated at home and not
11 allow the injured workman to remain on the job.

12 With these factors in mind, certainly
13 industrial physicians and physicians who are acquainted
14 with industry in some instances are better qualified to
15 make a decision as to the man's ability to work with
16 his injury.

17 In a discussion on favouring work, we
18 would like to know who should be considered and who
19 actually benefits from it. Favouring work given either
20 at the time of the accident or after a period of dis-
21 ability when the workman is ready to return to work
22 but at not necessarily his own job has certain advantages
23 for the workman and the employer. Now, these advantages
24 to the workman include realization and a sense of
25 accomplishment in being able to do a useful job in
26 spite of his injury; rehabilitation and convalescence
27 becomes easier than if a man was allowed to remain home
28 with, perhaps, no specific instructions regarding re-
29 habilitation, while on the job with an injury he can be
30 assessed daily if need be. The injured workman also



1 realizes that his employer is treating him as a real
2 individual by recognizing his disability and his ability
3 to perform limited work and providing him with this work
4 that is required. In addition, the workman receives
5 full wages and many men with large families and financial
6 burdens are very thankful for this arrangement. The
7 workman also realizes that the work arranged for him
8 has been approved by a qualified physician and the work
9 is designed not to re-injure or aggravate his present
10 condition.

11 Along with the advantages to the injured
12 workman, there are certain advantages to the employer,
13 and some of them are: That the injured man does provide
14 a real and useful function and does not merely just put
15 in time at the factory. There also develops a certain
16 rapport between the employer and the workman which is
17 beneficial to both, particularly when you consider pride
18 in one's work and the quality of the work performed. A
19 good rapport is established instead of a possible latent
20 hostility often expressed "They don't care about the man
21 as long as they get production." Favouring work also
22 tends to reduce costs to the employer. In this regard,
23 one should always keep in mind that increased production
24 costs are always passed on to the consumer, and if costs
25 can be lowered, then ultimately the whole of society
26 benefits from it.

27 Now, it is my experience that once a
28 person becomes a lost time claim it is much more difficult
29 to get him back to work once he has been at home. The
30 motivation of the individual enters here and this one



1 factor often plays an important part of whether a man
2 returns to his own job, will accept favouring work when
3 it is offered or when he returns to some suitable work
4 after being off work with some major injury. Of course,
5 people know how to add and figure, and, unfortunately,
6 some feel that it is to their advantage to stay off
7 work than to return to work for just a few dollars more
8 than what they are already receiving. These people
9 usually end up staying off until they can perform their
10 own job instead of returning to favouring work which is
11 well within their capabilities. It is always distress-
12 ing to me to examine some young man with a minor injury
13 such as a contusion or sprain and have him say he will
14 remain off work one or two weeks, even refusing favour-
15 ing work, and then later see another man who has perhaps
16 a more severe injury that he received at home insist
17 that he is fine and most assuredly would be able to do
18 his own job and not even request any favouritism. Again,
19 motivation is an important factor.

20 Now, the implementation of such a
21 programme of favouring work has its problems, and
22 certainly basic to it is the availability of favouring
23 work. We, in the automotive industry, are fortunate
24 to have a great variety of jobs which includes anything
25 from sitting, walking to standing. Basically, the jobs
26 are of the light labour variety. I also realize that
27 there are a number of industries where favouring work
28 is not just possible or available, but the point I make
29 is this, that where it is possible and where it is
30 available it should be utilized.



1 From a practical point, some injuries
2 of themselves are self-evident and are not considered
3 serious. Certainly, a man who has chest pain and has
4 a physician tell him that it is a strained chest muscle
5 considers this less serious than if his physician told
6 him he had a coronary thrombosis. In other words, after
7 proper assessment of any injury the seriousness of the
8 injury is then more evident and in true perspective.
9 A man who strikes his finger with a hammer and his x-ray
10 is negative and he merely has a blackened nail has a
11 contused finger and the treatment should not be such
12 that it is over-treated, which in the workman's mind
13 might make it more serious. Injuries of this type are
14 not sufficiently severe to have the man sent home,
15 thereby preventing him from earning full wages. He
16 should be treated and work provided that he can perform
17 without the risk of re-injuring his finger. Most people
18 are appreciative of this type of action.

19 This again brings us to the industrial
20 physician making a total assessment of the injury and
21 of the work performance now requested of the workman.
22 Of course, there are conditions that by their very
23 nature require bed rest, analgesics and bed rest at
24 home. This man should not then be given favouring work,
25 when the industrial physician, using good medical judg-
26 ment, insists that the man go home and stay off work
27 until such time as he can perform work that will not
28 be injurious to him.

29 THE COMMISSIONER: I don't like to
30 interrupt your presentation, but I am wondering about



1 the break for lunch.

2 DR. SCHISLER: I will be five minutes,
3 sir.

4 THE COMMISSIONER: Then perhaps we will
5 let you finish and you will be available after lunch
6 for questions.

7 DR. SCHISLER: Certainly. With regard
8 to the man having acute back strain and requiring bed
9 rest, favouring work should not be allowed for this man;
10 this man should be treated at home and in bed and
11 should not be allowed to sit up. One has to keep in
12 mind that the industrial physician is primarily a
13 physician and has to make decisions based on sound
14 medical judgment and principles. He is not to be biased
15 either for a workman or an employer. When this medical
16 judgment is coupled with the knowledge of the man's
17 job and the environment, then a more complete assessment
18 can be made.

19 Of course, when we are dealing with
20 people there is always a difference of opinion may
21 occur between the industrial physician and the workman's
22 family physician. There is usually never a disagreement
23 with regard to the injury itself, but the problem is one
24 of the man returning to work or remaining at home. In
25 most cases, we find that the family doctor is unaware
26 that favouring work has been offered and when informed
27 usually indicates that man can return to work. Direct
28 communication with the family doctor often prevents
29 unintentional misunderstandings between the employer,
30 the workman and the doctor.



1 In summary, therefore, when one is
2 considering all these facts, it would seem that the
3 formal recognition of medically approved favouring work
4 would be advisable, practical and beneficial to the
5 workman and the employer and ultimately to the consumer
6 and society in general.

7 THE COMMISSIONER: Well, there is
8 recognition now, is there not, by the Board?

9 DR. SCHISLER: The Board indicates in
10 its accident report, is this man capable of doing
11 limited work. I might add that a family physician may
12 say yes, but this is when there is no favouring work
13 available because of this particular job. I might also
14 add that occasionally it would seem that there is no
15 action taken on this type of answer.

16 So this is what we have to say in
17 Chrysler (Canada) in Windsor where perhaps we are at
18 an advantage in having favouring work because we have
19 such a wide variety of jobs. We feel if a man has an
20 injury he can be treated on the job and doesn't have
21 to lose any time off work. There are also certain types
22 of injuries where a man shouldn't be out of the house,
23 he should be in bed, and that is so assessed.

24 THE COMMISSIONER: That is your first
25 conclusion?

26 DR. SCHISLER: This is all I have to say
27 on the subject, Mr. Commissioner.

28 THE COMMISSIONER: Well, I find this
29 very interesting. It is obviously from the workman's
30 standpoint and everybody's standpoint that he be given



1 work if he can do work. Our difficulty is I am not
2 sure what we are being asked to do or what the Board is
3 being asked to do, other than what is being done at
4 present.

5 DR. SCHISLER: They have questionnaires
6 put in the report which ask, is this person capable of
7 working. Very often the answer is affirmative, and so
8 there doesn't appear to be any action by the Board on
9 this. One of the problems we have is the man who
10 refuses to do favouring work, and again it is the short-
11 term case which is the problem because if he loses two
12 or three days off work, by that time he is better anyway.
13 We feel that a case where a man sprains his wrist on
14 Wednesday and he is able to come back to work on the
15 Friday, but he doesn't return till Monday, that is the
16 lost time case. If the Board feels that possibly a
17 workman can certainly work to the benefit of himself and
18 the employer, then they may be more stern about this.

19 THE COMMISSIONER: Your recommendation
20 is that the Board should be a little more aggressive in
21 seeking to find out if the man can do work.

22 DR. SCHISLER: If the man can do work,
23 I don't think he should be a lost time case.

24 MR. ESTEY: I take it what you are
25 really asking the Commissioner is including in his
26 report some remark to the general effect that Section
27 41 should not be changed. Some people have asked us
28 to change it and go to 100 percent disability.

29 DR. SCHISLER: I don't think a person
30 partially disabled is 100 percent disabled.



1 MR. ESTEY: And if light work is avail-
2 able?

3 DR. SCHISLER: Yes. If I may add, the
4 light work is offered to the man, and I think there is
5 a two-edged sword here, that if it is not offered to
6 the man he is not aware that he can do a different job
7 than the job he was injured on. I might add that this
8 is the reason I think why some family physicians will
9 indicate a man is totally disabled and not allow him
10 to go to work because the man has not told his family
11 physician that a lighter job has been offered to him.
12 We, in industry, know what job he was doing when he was
13 injured, we have the accident report, and we can assess
14 the injury and say what this man can do.

15 MR. ESTEY: What do you say as to the
16 administration of the statute? Are you saying, as to
17 the work the man can do, that the employer should tell
18 the Board what work the man can do?

19 DR. SCHISLER: I think the employer
20 should tell the Board, and it is done on Form 10-B,
21 I think it is, that this man is able to do suitable,
22 restricted work.

23 MR. ESTEY: That is by the doctor?

24 DR. SCHISLER: Yes.

25 MR. ESTEY: Forgetting for a moment an
26 establishment the size of yours, how does the Board know
27 the work is available if the physician is a private
28 physician? I take it you are saying that the plant
29 itself should be reminded that they should tell the
30 Board whether this light work is available.



1 DR. SCHISLER: Yes, that is correct.

2 MR. ESTEY: Section 41 says that the
3 compensation is based on what the man is physically
4 capable of earning.

5 DR. SCHISLER: Yes. This, again, is
6 where the industrial physician comes in. He can tell
7 what this man is capable of doing.

8 MR. ESTEY: But in the vast majority of
9 cases they don't have an industrial physician.

10 DR. SCHISLER: That is correct.

11 MR. ESTEY: How does the Board find
12 out (a) what the man is capable of doing and (b) what
13 work is available unless the employer is required to
14 tell him?

15 DR. SCHISLER: That is right. I think
16 the employer should do this.

17 MR. ESTEY: And you say it is very
18 much better if there is an industrial physician there
19 because he knows the facts.

20 DR. SCHISLER: Yes, I think an industrial
21 physician is in an excellent position to know both
22 sides. The family physician mainly has to
23 rely on the injured workman telling him how he was
24 injured and whether or not a favouring job was offered
25 him.

26 MR. ESTEY: One of the forms, Form 9,
27 is the employer's subsequent statement, and one of the
28 many questions asked is: If unable to do former
29 work, what kind of work is he doing or able to do?
30 If only able to do other than former work



1 what do you consider his services worth? When, if ever,
2 will he, in your opinion, be able to do his former
3 work? So there are a number of questions
4 in the area you are talking about?

5 DR. SCHISLER: Yes. When talking about
6 a man on full wages on the favouring job, and then
7 he returned to his full job without any loss of wages.

8 MR. ESTEY: Form 42 goes further and
9 says (this is the employer's progress report). Have
10 you any suitable work for him if he is unable to start
11 back at his regular work? If so, please give details
12 and approximate wages. That is right on the
13 point, isn't it?

14 DR. SCHISLER: Yes. And I might add
15 that in some industries the favouring work may be
16 quite a bit less moneywise, and this should be indicated
17 to the Board. But we usually keep a man on the same
18 rate while on the favouring job.

19 THE COMMISSIONER: If he goes into a
20 lesser rate the employer makes up the difference?

21 DR. SCHISLER: Yes.

22 MR. ESTEY: Form 12 has a very helpful
23 box which says:

24 "By providing suitable work where possible
25 the employer assists in the rehabilita-
26 tion of his workmen and indirectly helps
27 to lower his own costs."
28
29
30



1 What you are saying is that should be
2 carried out.

3 DR. SCHISLER: To the limit particularly
4 if the situation is such that it is available. I
5 might add that in some industries you cannot give a
6 man a light job, so if he has a minor injury he then,
7 in essence, is 100 percent disabled for that particular
8 job.

9 MR. ESTEY: If he has no alternative
10 then in practice he is 100 percent disabled?

11 DR. SCHISLER: That is right.

12 MR. ESTEY: And the section doesn't
13 allow that? The section says it is what he is capable
14 of doing that counts?

15 DR. SCHISLER: Certainly we feel that
16 if he is capable of doing a useful job and no loss of
17 wages then certainly he should not become a lost time
18 claim?

19 MR. ESTEY: Do part of your duties
20 relate to the question of safety regulations?

21 DR. SCHISLER: We work fairly closely
22 with safety now in the last year. We always have
23 insofar as when we feel an injury may be related to,
24 say, a safety infraction or there may be a possible
25 safety hazard that no one is aware of. We then recommend
26 investigation of this accident by Safety and then
27 they relate back to us.

28 MR. ESTEY: That is plant safety
29 personnel.

30 DR. SCHISLER: This is correct. This is



1 in-plant.

2 MR. ESTEY: You don't have any contact
3 with the Department of Labour safety people?

4 DR. SCHISLER: The medical doesn't
5 directly but the safety, of course, does.

6 MR. ESTEY: And I take it in the course
7 of your work then you have no procedure whereby you
8 alert the safety officials of the Department of Labour
9 or the Board. where there is a frequency of accidents
10 in a particular phase of your work?

11 DR. SCHISLER: We usually alert our
12 safety in plant and then they usually relate that to
13 the Department of Labour. We don't go directly to the
14 Department of Labour, not in plant accidents.

15 MR. ESTEY: I think that is all, Doctor,
16 thank you very much.

17 THE COMMISSIONER: Thank you, Doctor.

18 We will stand adjourned until twenty
19 minutes past two.

20
21 ---At 1:15 P.M., the Hearing adjourned until 2:20 P.M.
22
23
24
25
26
27
28
29
30



1 ---On commencing at 2:20 P.M.

2
3 MR. ESTEY: To carry on, Mr. Commissioner,
4 on accident prevention, we have a number of associations
5 and organizations interested in this.

6 THE COMMISSIONER: Going back, Mr. Estey,
7 until last Thursday there were still two people for us
8 to hear from - Mine, Mill and the Ontario Federation of
9 Labour on the work we had been dealing with then. They
10 had been told they would be heard. Are they satisfied
11 to just go on in the ordinary way today?

12 MR. ESTEY: One of those two we are
13 going on with right now, The Ontario Federation of
14 Labour on the topic for today, Accident Prevention, and
15 I understand that they have not dealt with industrial
16 disease and also, of course, by reason of the change of
17 programme on Friday, they have not dealt with vocational
18 rehabilitation. I think you are prepared, Mr. Craigs
19 now to start in?

20 MR. CRAIGS: Yes.

21 MR. WEISBACH: Mr. Commissioner, my
22 name is Henry Weisbach, I am the Executive Secretary
23 of The Ontario Federation of Labour. We intend to deal
24 with the subject before you in two parts. Mr. Craigs
25 will discuss the question of industrial diseases and
26 rehabilitation and, later on, I will deal with the
27 section of the brief on accident prevention, if this
28 is all right with you.

29 We had mentioned on the industrial
30 diseases a number of items which we have taken up with



1 the Board, and I think Mr. Craigs will outline some of
2 our problems in this direction. I would appreciate it
3 if he could present this part to you now.

4 MR. CRAIGS: Mr. Commissioner, as I
5 have pointed out on a couple of occasions to you, we
6 have some difficulty in organization since we are
7 affiliates and, therefore, can only represent a consensus
8 of opinion. This also has affected our position inasmuch
9 as we have had to refrain (a) from attempting to present
10 large amounts of statistical data since we do not have
11 the facilities available to us and (b) we have refrained
12 from quoting at any length expert opinion on this matter
13 because we felt that the Commission has all the experts
14 that it can bear.

15 As regards industrial diseases, Mr.
16 Commissioner, there can be no question / ^{that} the complexity
17 of modern industrial life is having some detrimental
18 effects on the people who are engaged in industry. As
19 far as we are concerned, we find our greatest area of
20 concern in the fact that the current Act is, in effect,
21 a blanket Act and does not specify, in our opinion,
22 specifically clearly how questions of industrial disease
23 can be successfully and speedily brought to the attention
24 of the Board; in other words, we feel that there is no
25 precise or deliberate mechanism available to effect
26 discussions. We do not think it presumptuous of the
27 Federation or we don't think it presumptuous of organized
28 labour to request that we be consulted on these matters.
29 We are the people affected by it, we are the people who
30 do the work and we are the people who are exposed.



1 THE COMMISSIONER: You are talking about
2 adding something to Schedule 3?

3 MR. CRAIGS: We are talking about adding
4 something to Schedule 3, sir.

5 I give you a case in point. Some two
6 years ago this Federation initiated with the Workmen's
7 Compensation Board ---

8 THE COMMISSIONER: Has the Board used
9 that power that it has to add it to Schedule 3? Has
10 it added anything there at all?

11 MR. CRAIGS: We are not too aware of
12 that, although my colleague perhaps could speak to that.
13 He says two or three have been added within recent years.

14 A case in point is, we initiated some
15 discussions with the Workmen's Compensation Board some
16 two years ago on the question of industrial deafness,
17 for want of a term, and also on radiation sickness.
18 We have only just recently after two years received a
19 reply from the Board about these two matters. We are
20 not suggesting for a moment that the Board is partic-
21 ularly guilty of deliberate delay, far from it, but
22 under the circumstances we feel that a period of two
23 years is too long for matters like this to be answered.
24 They have not been resolved, Mr. Commissioner: they
25 have merely been answered. It may well be that the
26 fact that you are sitting as Commissioner on the Work-
27 men's Compensation Act may have to some degree influenced
28 their reply since they may find it improper or they
29 may consider it improper to assume a course of action
30 that you may in your wisdom recommend against.



1 THE COMMISSIONER: I rather gathered
2 from these medical people whom we heard last week that
3 the range now of new substances and other things, makes it,
4 with
5 /the other types of industrial disease that could arise
6 very difficult to start to enumerate them all and that
7 they feel, or the Board feels, that they have sufficient
8 leeway to be able to handle them all and they are handling
9 them all and they are handling them all at this time.
10 You were here, no doubt, when that testimony was given?

11 MR. CRAIGS: No, sir, I was not. We
12 are not suggesting that new industrial diseases are
13 going to crop up regularly every six months or every
14 nine months or every year. What we are drawing to your
15 attention is our concern that there is no formalized
16 method by which we can reach the Board with any regular-
17 ity and, since we are dealing here with a subject in
18 which people are actually involved --

19 THE COMMISSIONER: You mean to reach
20 the Board to ask that a subject be included in Schedule
21 3?

22 MR. CRAIGS: Amongst other things, but
23 we are asking that some consideration be given to
24 initiating regular consultations so that we know, for
25 want of a better term, the state of the art at any
26 given moment.

27 As I said, sir, we are not saying that
28 a disease is going to appear with any magic regularity,
29 far from it. But we would like to see a system initia-
30 ted whereby representatives of organized labour could
meet with the Board on a regular basis to see what is



1 being done about such matters as deafness.

2 Another area that is becoming increasingly
3 sensitive is the question of dermatitis. With the vast
4 amount of detergents that are available on the market
5 now, both industrial and domestic, there can be no
6 question that some rather mysterious forms of dermatitis
7 are appearing. There is a question here of whether this
8 is an occupational hazard under the industrial diseases.
9 Just what is the state of the art?

10 We, as I say, sir, have no firm format
11 that we suggest might be implemented or used. We are
12 simply asking that the present blanket coverage of the
13 Act be changed to take into consideration some of the
14 observations that I have just made.

15 THE COMMISSIONER: We are finding
16 difficulty now in the wording. You say the blanket
17 condition of the Act should be changed. What do you
18 mean by that?

19 MR. CRAIGS: At the present moment
20 it strikes us as lacking determination. The Board has
21 the power to consult, but it doesn't say how, when, how
22 often, at what stage of the situation, whether they can
23 initiate studies or whether we can initiate studies;
24 it simply says that the Board can consider it. We are
25 asking that the Act be a little more specific in this
26 regard.

27 That is all that we have to say on the
28 question of industrial diseases, Mr. Commissioner, and
29 I would, with your permission, like to touch on some-
30 thing else on which I am sure a great deal of expert



1 opinion has been made available to this Commission
2 and there will be more to come.

3 I have sat through a good many of these
4 hearings and heard a number of comments about the
5 question of malingering. In sitting in the audience,
6 I am left with the belief that there is so much
7 malingering going on in this province that it has almost
8 reached epidemic proportions. I would like, on behalf
9 of the Federation, to take strong issue with this.

10 THE COMMISSIONER: I had not thought
11 that anybody had said that. There has been, it is true,
12 a reference to the great increase in back injury awards
13 and there has been reference to the fact that if com-
14 pensation exceeds the wages a man would otherwise
15 receive it would be an incentive to malingering and,
16 of course, it would; you would be the first to agree
17 to that. But I think in every case I have thought that
18 it was qualified by saying not that there was a lot of
19 malingering but they were proceeding to nail it down
20 so there would be less.

21 MR. CRAIGS: That may have been your
22 impression, Mr. Commissioner.

23 THE COMMISSIONER: I certainly didn't
24 have the impression that you say you gathered yourself
25 that all the workmen were malingering or a large number
26 of them.

27 MR. CRAIGS: Well, sir, that was the
28 impression I obtained.

29 THE COMMISSIONER: Well, if that is the
30 impression you got, speaking for myself, I think most



1 workmen want to get back to work. They don't want to
2 sit at home and listen to their wives.

3 MR. CRAIGS: I am delighted you see it
4 that way, Mr. Commissioner - delighted. As I say, I
5 took the liberty of mentioning it because I think it
6 is pertinent and it is important.

7 THE COMMISSIONER: Of course it is. It
8 is one of the things that is quite obviously very
9 important, not only the definition of "Injury" but this
10 big increase in payments and the reason for it. Of
11 course it calls for consideration.

12 MR. CRAIGS: Malingering is rather
13 reminiscent of that rather weird charge that they had
14 in the airforce, "dumb insolence."

15 THE COMMISSIONER: I don't think it is
16 the same as that.

17 MR. CRAIGS: It is just as easy to lay
18 as dumb insolence. I know that only the British could
19 have invented such a diabolical thing.

20 However, with this question of neurosis,
21 here again we are in an area, I suppose, of making
22 judgments but we feel that we are qualified to make
23 these judgments because we are the people who are
24 involved with those who work for a living in the
25 plants. It seems to us that there is a great deal of
26 evidence available not only in Canada and the United
27 States but in Western Europe too where the stresses and
28 strains of industrial life are having a very deleterious
29 effect on the workman, especially when he or she has
30 sustained an accident.



1 In West Germany, in Austria, in France
2 and in the Scandinavian countries a great deal of
3 attention has been given to this, not the least of
4 which is problems of isolation - the narrow focus of
5 interest and the span of attention on employment on
6 functions in a plant today are considerable, the least
7 of which is the automobile industry. Especially in
8 questions where there is a speed up of the line and a
9 man is doing a single function the concentration that
10 he needs to apply to the job, the narrow span of
11 attention, the pace at which he works, etc., contribute
12 to feelings of isolation, etc., which, undoubtedly,
13 have an effect on the workman.

14 In this regard we are a little critical
15 of the Workmen's Compensation Board because we feel
16 that they have to some degree dragged their heels in
17 paying some attention to this aspect of industrial
18 employment and Workmen's Compensation. We would freely
19 concede that it is an extremely difficult area and we
20 are not suggesting for a moment that it can be solved
21 simply by an investigation but we feel it is an area
22 in which the Board should have intruded a long time
23 ago. The conditions in industrial life are changing.
24 One only has to pick up a daily newspaper to find this
25 out and in this regard we feel that questions of
26 nervous and stress, exhaustion, etc., are a proper
27 responsibility of the Workmen's Compensation Board.

28 THE COMMISSIONER: You have not any
29 statistics or anything to try to indicate the incidence
30 of neurosis leading to illness is any greater among



1 the workmen than among any other segment of the popula-
2 tion? There has been a speed up in life generally.

3 MR. CRAIGS: Yes, this is true. No,
4 Mr. Commissioner we have no statistical data to offer
5 this Commission at all, primarily because it is a
6 field that has not received much attention. This is
7 not just a question of, say, Ontario being lax in this
8 matter but it is also in other parts of the world too.
9 Even in West Europe they are only just beginning, or
10 have only just begun within the last four or five years
11 to accumulate any data and I am sure you would agree
12 that in this area of investigation statistical data
13 would take many, many years to accumulate. So we are,
14 I suppose, in the area of making value judgments or
15 else we are entirely dependent on professional opinions
16 by psychiatrists and other forms of specialty in the
17 medical profession.

18 As I said, our observations on the
19 Workmen's Compensation Board are primarily that it has
20 not moved with the speed that we think it ought to and
21 could have moved into this area. Our whole area of
22 concern is, of course, not just the immediate care of
23 those who are suffering from nervous exhaustion of one
24 kind or another, but it is the latter effects too, the
25 effects that it will produce at retirement age, the
26 kind of citizens that we can expect to have twenty years
27 from now. As you noted yourself, Mr. Commissioner, the
28 speed of life is getting faster all the time and since
29 organized labour operates where it can with collective
30 agreements, we have a rightful concern for what is going



1 to happen and in what condition these people will be at
2 retirement age. We want them to live longer and enjoy
3 their retirement age as much as anyone else and perhaps
4 even more so. So that in this area, we are not only
5 thinking of the immediate problems to be solved but
6 also the long-range problems.

7 That is all I have in that area, Mr.
8 Commissioner, and I thank you for your attention.

9 THE COMMISSIONER: You see, that last
10 witness was saying that if you didn't get him back to
11 work fast enough a man might develop a neurotic complex
12 that way, depending on his own doctor. It is quite
13 true all right. You can certainly see lots of cases
14 of what they call traumatic neurosis in the courts and
15 it is also, as you say, a very complicated and vague
16 field where it is not easy to tell the difference
17 between malingering and a real neurosis of some kind.
18 You didn't say that but, no doubt, you agree with that.

19 MR. CRAIGS: I always felt that the
20 armed forces could not defy it. It has defied them
21 and it has defied many people.

22 MR. ESTEY: Just one or two questions,
23 Mr. Craigs, on industrial disease. One thing I wanted
24 to ask you earlier but I never did was: Do you have
25 any idea what percentage or how many people in the work
26 force covered by the Workmen's Compensation Act is
27 represented by the Ontario Federation of Labour?

28 MR. CRAIGS: Well, we have a membership
29 of about 480,000 and that is for the Province of Ontario.
30 That would be the answer, a little over 480,000.



1 MR. ESTEY: I take it we haven't heard
2 how many have been covered by the Act?

3 MR. KERR: Not yet, Mr. Estey.

4 MR. CRAIGS: They probably all will be
5 because they represent people where a collective agree-
6 ment exists. They are organized as far as we know.

7 MR. ESTEY: On your proposals in
8 Schedule 3, you deal with several proposals and one is
9 ionizing radiation and I think you have already heard
10 that is covered in Paragraph 9 of Schedule 3. That
11 takes us down to deafness which you discussed, and
12 salmonellis. Both of those are recognized in other
13 jurisdictions and I take it you believe it should be
14 recognized in Ontario?

15 MR. CRAIGS: Yes.

16 MR. ESTEY: And for the administration
17 of the Act it would be better that they were designated
18 as Schedule 3, rather than being left to the Board's
19 finding as they can find under 116 that this is a con-
20 dition which arose from employment?

21 MR. CRAIGS: And then also, of course,
22 such things as dermatitis and other things which is
23 an area in which we feel a lot could be done.

24 MR. ESTEY: I take it that you would be
25 content recognizing that this Royal Commission can't go
26 into all those ailments, if the statute, by some pro-
27 vision, invited people covered by the Act to make a
28 submission to the Board for an amendment to the regula-
29 tions to add something to Schedule 3 or to take it away?

30 MR. CRAIGS: Oh, yes.



1 MR. ESTEY: Add it or take it away?

2 MR. CRAIGS: Yes.

3 MR. ESTEY: The application of Section
4 11 by the Board presently in existence confirms Schedule
5 3 as being industrial diseases, and what you want is
6 a hearing to bring to the Board a suggestion that
7 regulation 11 will be amended which will have the effect
8 of amending Schedule 3.

9 MR. CRAIGS: That is our position.

10 MR. ESTEY: Thank you.

11 MR. CRAIGS: Thank you, sir.

12 MR. WEISBACH: I might add, Mr.

13 Commissioner, to what Mr. Craigs has said about indust-
14 rial deafness, in particular. We have, as he pointed
15 out, submitted a brief to the Workmen's Compensation
16 Board about two years ago and the main objection we
17 have that a person whose employment results in some
18 degree of industrial deafness is not now compensated
19 by the Board until he actually is removed from this
20 occupation. This is particularly true, for instance,
21 in the case of a fellow from the paper mills where
22 they work on the paper-making machines under considerable
23 noise and unless they agree to remove themselves from
24 the particular occupation they won't be compensated for
25 loss of hearing until either they retire or, as I said,
26 they go to other occupations.

27 THE COMMISSIONER: The same thing applies
28 to silicosis?

29 MR. WEISBACH: The same thing applies
30 there too. This is one of the points we are trying to



1 make with the Board in order to look after these fellows
2 while they are still on the job.

3 THE COMMISSIONER: Thinking back to
4 the purpose of this Act and the beginning of this Act,
5 there is no doubt that it was for the purpose of paying
6 compensation for lost wages. Until the time that loss
7 develops, he gets no compensation, that is what the
8 Board does?

9 MR. WEISBACH: This is true, but we
10 feel that there should be some way of looking after
11 the person who gets into a position where he is losing
12 hearing because he is actually, while he may not suffer
13 a loss of wages, is suffering in other ways - socially,
14 or even at work. We have proposed the point that
15 possibly some steps should be taken such as regular
16 examinations, tests to be taken for the employees and
17 possibly some of these things could be prevented rather
18 than have them happening and then trying to fight them
19 out afterwards. I think we are considerably interested
20 in the prevention of these things in order to help the
21 fellow to keep his hearing. Of course, this is true
22 in other cases as well.

23 THE COMMISSIONER: Presuming that it
24 is due to his occupation, he is assured of eventual
25 compensation; whether it is for partial or total dis-
26 ability, he is assured.

27 MR. WEISBACH: If he suffers a high
28 enough loss of hearing he will be compensated but only
29 if he leaves the occupation he is in. If he feels
30 that he has to seek other employment in the same plant



1 which may be compensated lower than he is earning now
2 or he can be compensated after he is retired and we
3 know some cases where the Board has actually compensa-
4 ted people but only six months after they have retired.

5 This, of course, is something which we
6 are still trying to work out with the Board. This is
7 one of the items we mentioned in the brief we submitted
8 almost two years ago now, the same on radiation. I
9 just wanted to add this, Mr. Commissioner.

10 The other point we are, of course,
11 considerably interested in is the question of accident
12 prevention. It may sound to the Commission that our
13 main interest is in getting as much compensation as
14 possible for the worker, but I think our other prime
15 responsibility is not only to see that the man is com-
16 pensated when he has suffered an industrial accident
17 but I think we are equally interested in preventing
18 the accident so compensation won't be necessary.

19 THE COMMISSIONER: And I know that Mr.
20 Justice Tysoe in his Commission when he reviewed the
21 B.C. Act really put the relative order as accident
22 prevention, rehabilitation and compensation. He put
23 "Accident Prevention" and "Rehabilitation" ahead of
24 "Compensation".

25 MR. WEISBACH: I would think this is
26 quite true because I think the more accidents we can
27 prevent the less we have to worry about the paying of
28 compensation and the more we can rehabilitate people
29 I think the better it will be for them. So, as far
30 as we are concerned - and I do not intend to read this



1 particular section of the brief, just to comment on
2 it - as far as we are concerned,^{as}/the legislative re-
3 presentative of the Trade Union movement in Ontario,
4 we consider accident prevention very important. Some
5 things have been done concerning it and even this has
6 changed over the last few years. We pointed out in
7 our brief that the accident prevention associations,
8 as set up now, are doing a very worthwhile job as safety
9 education is concerned, but still, of course, they
10 have no power to enforce the existing legislation.
11 We also feel, Mr. Commissioner, that the recent appoint-
12 ment of a safety director by the Workmen's Compensation
13 Board --

14 THE COMMISSIONER: You have heard
15 that evidence this morning?

16 MR. WEISBACH: Unfortunately, I wasn't
17 here.

18 THE COMMISSIONER: There has been a
19 tightening up of coordination and apparently it is
20 still in process of this overall accident prevention
21 field as it is distributed between the Department of
22 Labour and the Workmen's Compensation Board. There is
23 apparently a close coordination between them, and there
24 is in existence a large department spending \$2,500,000
25 a year on inspection and enforcement under the Depart-
26 ment of Labour.

27 MR. WEISBACH: This we are aware of.

28 THE COMMISSIONER: The point you raise
29 is one that has been raised for many years. It was
30 at the time Mr. Justice Roach had an inquiry, but the



1 Board has these educational powers but no power of
2 enforcement, and I just wondered if the information
3 this morning would make any difference in your opinion?

4 MR. WEISBACH: What I meant, Mr.
5 Commissioner, is we are saying the existing accident
6 prevention associations of the educational function
7 are doing a very worthwhile job in this direction; in
8 fact, I think the relationship between the accident
9 prevention associations and the labour movement over
10 the last few years has considerably improved and I
11 think there is far more co-operation between the
12 associations and the labour movement than there has
13 been in the past and we are very glad. We feel that
14 possibly the appointment of the safety director by
15 the Compensation Board could assist even further in
16 the coordinating of these activities and we hope this
17 will come about.

18 THE COMMISSIONER: Well, it has come
19 about, it is there, but you think he has not had much
20 chance to get going?

21 MR. WEISBACH: No. We also note that
22 the appointment of the Labour Safety Council by the
23 Department of Labour has possibly helped to some extent
24 to get this co-operation because I think for the first
25 time for many years there is a body there, even if it
26 is only an advisory body, which is composed of equal
27 representation by management organizations, as we call
28 it, or the accident prevention organizations and the
29 labour movement and I think that body has already in
30 the very short time of its existence shown some initiative



1 and I think while it only is an advisory body, it
2 certainly is, in my opinion, able to help and, being
3 a member of this Council myself, I think I have been
4 able to observe the workings of this Council very much.

5 Nevertheless, we believe, Mr. Commiss-
6 ioner, that in the direction of accident prevention,
7 possibly some similar system could be instituted like
8 is now in force in the western provinces, where all
9 regulations concerning accident prevention and the
10 whole work of accident prevention is now in the hands
11 of the Workmen's Compensation Board as a central safety
12 authority.

13 I think one of the problems we have
14 in Ontario is that we have numerous departments of
15 government doing inspection work and it could quite
16 feasibly happen that in the course of a day or a week
17 a number of inspectors could get into a plant --

18 THE COMMISSIONER: Mr. Weisbach, Mr.
19 Eberlee this morning said "Well, it is more efficient
20 this way", he said, "The Workmen's Compensation Board
21 would be concerned only with the employee's safety,
22 whereas the Department of Labour has to be concerned
23 with public safety as well." I mean, it has to look
24 at safety measures and really, you would be sending two
25 people in to do work that was closely related instead
26 of just one if you had them coming in from both direct-
27 ions.

28 MR. WEISBACH: This may be true as far
29 as public safety is concerned, but we find that in the
30 western provinces where the system has now been enacted



1 for some time it is working very well, that the Workmen's
2 Compensation Board works in close co-operation with the
3 Departments of Labour there and I think the inspection
4 services are pretty effective in the western provinces.
5 In Ontario, the various branches of the government -
6 and we are not saying they are not doing an effective
7 job, I think they are or at least I think they have
8 improved the inspection services considerably over what
9 it has been in the past, but we still feel that some-
10 where there should be some coordination, some authority
11 which could look at this whole thing and possibly make
12 some recommendations which would not countermand the
13 other. An inspector for the Compensation Board can
14 go in and inspect first aid facilities and look at
15 possibly some of the other things in the plant and I
16 have found out only recently he cannot instruct the
17 employer to make certain changes in safety features,
18 that this has to be done by the Department of Labour
19 and, so, we have to, very often, find ourselves in the
20 position where we have to write to two or three various
21 departments in order to get certain things corrected
22 in a plant. From this point of view we feel, Mr.
23 Commissioner, that there should be some uniformity
24 in the inspection services. I think this would help
25 greatly to improve the conditions we have.

26 We also feel that, as a Trade Union
27 movement, we have the responsibility ---

28 THE COMMISSIONER: In the western
29 provinces, in British Columbia - in Manitoba none of
30 it comes under the Board, does it?



1 MR. WEISBACH: It does now, yes, since
2 last year.

3 MR. ESTEY: All the western provinces?

4 MR. WEISBACH: All the western provinces
5 from Manitoba west now. The Manitoba law was changed
6 last year, I think last July, 1965. The Compensation
7 Board is now the central safety authority in Manitoba,
8 just as it is in the other three provinces. It only
9 started last year.

10 THE COMMISSIONER: Is there any con-
11 tribution under those circumstances from the consolida-
12 ted revenue fund of the province or is it all carried
13 by industry?

14 MR. WEISBACH: As far as I know, I
15 believe it is all carried by the Compensation Board.
16 This is, at least, the information I have.

17 THE COMMISSIONER: Well, we can find
18 that out.

19 MR. WEISBACH: One other point I want
20 to make, and I don't want to take too much of your
21 time, Mr. Commissioner, one other point I would like
22 to make and we would once again like to point to the
23 legislation in western Canada which provides that in
24 every plant/^{where}there are at least 15 people working,
25 there should be a joint safety committee which consists
26 of equal representation by management and labour. We
27 feel very strongly about this, Mr. Commissioner, because
28 we feel that in the past - and this is not too much of
29 a complaint but in a way it is - but in the past we
30 feel most of the safety programmes which were instituted



1 were directed from the top with very little or almost
2 no participation or consultation by the ranks of the
3 workers in the plant and we feel that if we want to
4 have an effective safety programme and if the safety
5 programme is to work, then I think it ought to be a
6 two-way street, with participation from both management
7 and labour on the same basis.

8 We feel if a programme can be worked
9 out jointly and if the workers in the plant are par-
10 ticipants and partners in the safety programme this,
11 in our opinion, could give a much better success to a
12 programme than it sometimes has been when it is only
13 directed by the supervisors or the foremen or manage-
14 ment themselves. So, for that reason, we are of the
15 opinion and we reiterate it in the brief, the recommenda-
16 tions made by His Honour Judge J.B. McAndrews in which
17 he said that there should be joint safety committees
18 in the plants and where he also stated that "It is
19 felt that the Accident Prevention Associations should
20 reach the point where they come to a closer understand-
21 ing with the labour movement and appoint one of the
22 representatives of the labour movement on their board
23 of directors", which, of course, is not now the case.



1 We understand the arguments which are
2 put forward state that the employers are paying for
3 safety and paying for the compensation and, therefore,
4 at least in some employer's circle the opinion exists
5 that labour has no right to take part in the activities
6 of the Association. We disagree with this, because we
7 feel that the cost of accident prevention and compensa-
8 tion is not only borne by the employer but by everybody,
9 by the public as well as by the employer. It is part
10 of the production cost, and we feel there should be
11 some recognition whereby labour representation on the
12 Board of Directors of the Accident Prevention Associa-
13 tion could be possibly helpful in this direction.

14 Again, I might say that we try in our
15 own organization to increase the activities in the
16 field of safety, and some of our unions have now
17 appointed full-time people working on safety and
18 safety education. The Ontario Labour Congress and
19 the Ontario Labour Federation have both set up standards
20 committees on safety and health, holding seminars and
21 courses. I have just got back from a school at the
22 weekend where we had a safety course in the local
23 area, and I think that our programme in this area has
24 been set up tremendously. We have a responsibility in
25 this field and we are anxious to play our part in the
26 prevention of accidents and hope that this can be done
27 on the basis of a partnership which would, in our
28 opinion, be far more successful than a one-sided deal.

29 I think this is about all we have to
30 say on this particular section, Mr. Chairman. I might



1 say that as a member of the Labour Safety Council I
2 feel that the Council is moving in the direction of
3 possibly concentrating efforts in the field of safety
4 education and also making recommendations to the
5 Minister which I think will be helpful in the preven-
6 tion of accidents. I think this is about all I need
7 to say at this time.

8 THE COMMISSIONER: It has been very
9 helpful. Have you any questions, Mr. Estey?

10 MR. ESTEY: Just a couple of questions.

11 I see on page 15 of your brief you
12 list the sections which you propose to be changed,
13 and one of them, Section 117, entitled "Accident
14 Prevention" when we go through the brief to find out what
15 the proposal is, we get eventually up to page 24 and
16 your recommendations skip from Section 116 to 122. Is
17 that an omission or is there some other place where
18 that is inserted? On every other one listed on page
19 15 you have a specific proposal.

20 MR. WEISBACH: Yes, I think the section
21 was simply mentioned in the light of the remarks we
22 made in the brief itself. This is simply listing the
23 sections on which we had some comments to make. And
24 it might have been repeated, too, because in one of
25 the other sections, I think we mentioned, Section 5,
26 the elimination of Schedule 2 which also crops up here.
27 I think this mention of Section 117 simply indicates
28 that we had some comments to make on accident prevention
29 which is covered under Section 117 in the Act.

30 MR. ESTEY: Your precise recommendation



1 though, is that we adopt the recommendations of Mr.
2 Justice Roach, I take it?

3 MR. WEISBACH: This is true. This is
4 correct.

5 MR. ESTEY: What do you mean, at the
6 bottom of page 8, the top of page 9, Mr. Weisbach,
7 about the demerit system? You say at the top of page
8 9:

9 "The demerit system included in the
10 Act could help to some extent to
11 establish an effective accident pre-
12 vention program, provided such a
13 program was carried out under the
14 supervision of The Workmen's Compensa-
15 tion Board. This however is not the
16 case."

17 I think that reference is to Section
18 86 (6) and (6a).

19 MR. WEISBACH: Yes, this makes refer-
20 ence to the fact that The Workmen's Compensation Board
21 has now the power to levy extra assessment against an
22 employer whose safety record is such that the Board
23 feels something should be done. Aside from the fact
24 that the Board has the power or the opportunity to
25 levy extra assessment, the Board itself - and this is,
26 I think, what we mean - the Board itself does not
27 carry out any safety education programme aside from
28 the efforts of the Safety Director to coordinate the
29 programmes of the safety associations. But here we
30 have on the one hand the power to levy extra assessment --



1 MR. ESTEY: Which they do.

2 MR. WEISBACH: Yes, which they do. We
3 realize they do it. But, on the other hand, the Board
4 itself has no particular programme working except that
5 which is put on by the accident prevention associations.
6 It falls in line with the other feeling we expressed
7 that we feel that possibly the Board should be the
8 central safety authority.

9 MR. ESTEY: That is what you mean at
10 the top of page 9. I take it you feel the demerit
11 system is satisfactory, but it has to be integrated
12 with some kind of policing power in the Board?

13 MR. WEISBACH: I would think so.

14 MR. ESTEY: I understand from your
15 conclusion to that section which is somewhere after
16 page 12 or page 13, that you think there should be
17 a central enforcement agent, meaning that the Board
18 should not only do what it is now doing, but should
19 take over the Department of Labour functions. As
20 regards the establishment of safety regulations,
21 enforcement in the case of breaches of safety regula-
22 tions. Is that what you are saying?

23 MR. WEISBACH: We mentioned in the
24 brief somewhere, in the second paragraph of page 13:

25 "At times we thought that The Workmen's
26 Compensation Board should be that
27 authority, but we still believe that
28 all accident prevention programs
29 should be directed by such a central
30 source."



1 For the lack of it, we are still of
2 the opinion that if the Workmen's Compensation Board
3 in Ontario is granted the same powers as they have
4 been granted in the other Boards in Canada, in the
5 western provinces, I think it would improve the situa-
6 tion considerably and would cut out a lot of publicity.

7 MR. ESTEY: That is what I wanted to
8 find out from you, what the O.F.L. position is. It
9 is not sufficient, I don't think, to say what they do
10 in Western Canada because the four provinces in Western
11 Canada have four somewhat different solutions to this.
12 First of all, does the O.F.L. say that all the safety
13 regulations should be administered by the Workmen's
14 Compensation Board or by the Department of Labour or
15 by some other central authority?

16 MR. WEISBACH: I think we say in the
17 last paragraph on page 13 that serious consideration
18 should be given to the establishment of one central
19 enforcement agency to avoid duplications and misunder-
20 standings.

21 MR. ESTEY: That is the paragraph I
22 used to base my question on as to what your recommenda-
23 tion is; what that change should be.

24 MR. WEISBACH: It could be a complete
25 new agency.

26 MR. ESTEY: What are you saying? What
27 do you want?

28 MR. WEISBACH: This is exactly what I
29 am saying.

30 MR. ESTEY: You think it should be the



1 Board?

2 MR. WEISBACH: Under the present
3 situation, I don't think the Board could do it. We
4 say that with the safety departments now, possibly
5 a complete new agency may be required to get our safety
6 regulations under enforcement and bring them up to date.

7 THE COMMISSIONER: Hasn't your
8 committee now that you are on succeeded in doing this
9 to a large extent?

10 MR. WEISBACH: Well, the Safety Labour
11 Council, Mr. Commissioner, actually has no power to
12 rule or make any regulations. All it can do is make
13 recommendations to the Minister. It is an advisory
14 council rather than an enforcement council. We can
15 advise the Minister on possible changes we would like
16 to see. We might advise him about changing existing
17 legislation or existing regulations, and we might also
18 advise him to possibly take a look at some other things
19 which may come up. It is only strictly in an advisory
20 capacity.

21 MR. ESTEY: You referred to Western
22 Canada having a solution which appealed to you as a
23 practical matter. One element of accident prevention
24 is the installation of safety devices.

25 MR. WEISBACH: That is right.

26 MR. ESTEY: Now, in three of the four
27 western provinces, the Board can order the installation
28 of a safety device and the fourth province cannot,
29 that is Manitoba, and that is reserved in the Labour
30 Department still. When you referred to this department,



1 I take it that would be the central agency. You say
2 that that agency should have all the powers presently
3 centred in our Department of Labour with respect to
4 safety procedures, regulations and enforcement, plus
5 the accident prevention authority given to the safety
6 associations under The Workmen's Compensation Board?

7 MR. WEISBACH: I think the safety
8 associations themselves have no enforcement powers.

9 MR. ESTEY: I don't want to go into
10 those again. That is what you want to move into the
11 central agency?

12 MR. WEISBACH: I think the central
13 agency should have the power to make regulations and
14 changes in the legislation.

15 MR. ESTEY: Like the Department of
16 Labour does now?

17 MR. WEISBACH: Yes. The Workmen's
18 Compensation Board, of course, works through the
19 Department of Labour, and I think it is only logical
20 that such an agency would be under the Department of
21 Labour. But whether this possibility is directly given
22 to the Compensation Board or whether under the auspices
23 of the Department of Labour when the new set-up is
24 made, I don't think it makes any difference.

25 MR. ESTEY: Would you take away from
26 the Board the control of the safety associations?

27 MR. WEISBACH: I don't know, without
28 consulting any other people that I can really give
29 you a yes or no answer to that.

30 MR. ESTEY: All right, let's move on.



1 What about the Department of Mines safety regulations
2 and their enforcement agencies. Would you move them
3 into a central agency along with the Department of
4 Labour powers?

5 MR. WEISBACH: Yes.

6 MR. ESTEY: And the same with the
7 logging industry?

8 MR. WEISBACH: Yes.

9 MR. ESTEY: And you would put all those
10 agencies under one central authority which you think
11 at the moment would be a new agency and not an existing
12 one?

13 MR. WEISBACH: Yes. In fact, some of
14 our unions who are engaged in this field are of the
15 opinion, for instance, there is always a discrepancy
16 between what is happening on the surface as/underground^{opposed to}
17 in a mine. For instance, a lot of people are of the
18 opinion - I am not so sure whether they are right or
19 wrong, but this is their opinion - that the surface
20 operation, they feel, should be rather considered an
21 industrial operation rather than a mining operation,
22 and I think for that reason there should be no reason
23 why this should not be under the same control.

24 MR. ESTEY: You would still have to
25 have, I take it, the same liaison, the same relation-
26 ship between that agency and The Workmen's Compensation
27 Board?

28 MR. WEISBACH: Yes, and the agency
29 has to be under the Department of Labour anyway,
30 because the legislation is administered by the Department



1 of Labour, so the relationship between this agency and
2 the Board and the accident prevention associations
3 could be established.

4 MR. ESTEY: It would be, roughly, the
5 same as between the Labour Department and the Compensa-
6 tion Board as now?

7 MR. WEISBACH: Yes.

8 MR. ESTEY: And the last agency to
9 move into this agency is this industrial hygiene wing
10 of the Department of Health, the Environmental Health
11 Branch?

12 MR. WEISBACH: We prefer to call it
13 the Industrial Hygiene Branch. We think they should
14 be under the same heading.

15 MR. ESTEY: Taken away from the Depart-
16 ment of Health?

17 MR. WEISBACH: I think so. The Indust-
18 rial Hygiene Branch, to use a term we are more familiar
19 with, does a lot of testing for the safety branch
20 and I think has more connection with the safety and
21 health angle than with the actual public health angle.
22 We would rather have it working under that direction
23 than the Department of Health.

24 MR. ESTEY: Thank you very much.

25 MR. CRAIGS: I wonder if you may
26 permit me a footnote, sir. I noticed your observation
27 about the man not wanting to leave home, his wife, to
28 get back to the plant. This is a quotation from a
29 ten-year study of noise which was carried out by Dr.
30 Gallo and Dr. Jlorig in California, the effect of



1 noise on 2,176 persons, and one of their conclusions
2 was as follows:

3 "Women are either less susceptible to
4 noise than men or women are less exposed
5 to it."

6 MR. ESTEY: Have you any comments on
7 vocational rehabilitation?

8 MR. WEISBACH: Yes.

9 MR. ESTEY: Page 24, I think.

10 MR. WEISBACH: Yes. Mr. Craigs will
11 deal with that.

12 MR. CRAIGS: Mr. Commissioner, with
13 regard to retraining and rehabilitation, here again
14 we do not wish to cast any aspersions on the efforts
15 made by The Workmen's Compensation Board, but we are
16 particularly concerned with whether the Board is able
17 to expand with any reasonable speed in its efforts.
18 Here, again, the problem is of considerable difficulty,
19 and this is particularly so in the area of the middle
20 aged workers who because of advancing age at least tend
21 to become more prone to accidents and the reluctance,
22 naturally, of employers to re-hire them. The problems
23 that these people face are significant. Many of them
24 are earning reasonable rates, particularly if they are
25 in a large industry and have the benefit of a collective
26 agreement, and if they are unable to get back to their
27 employment (a) because of the nature of the disability
28 or (b) the reluctance, quite often the outright
29 unwillingness of the employer to take them back, we find
30 these people in quite a difficult position. If they



1 had any length of service in a plant, they probably
2 have not had the benefit of substantial education and,
3 therefore, they invariably find themselves required to
4 take work if it is available at substantially less
5 earnings than they have been normally used to, and
6 unless some significant effort can be made in rehabil-
7 itation and particularly in retraining, these people
8 suffer considerable economic disadvantage which pursues
9 them for the rest of their working lives.

10 To put it more succinctly, they are
11 almost perpetually behind the eight ball. In a rela-
12 tively fair sized city such as St. Catharines or London,
13 perhaps this is not so much a problem as it is in smaller
14 localities, communities, and we don't think that there
15 are sufficient facilities, we don't think there is
16 sufficient money available, we don't think that there
17 is sufficient staff available to carry out an adequate
18 programme of retraining for this kind of person.

19 The effort that would need to be made,
20 I would say, would be substantial, sir; but if not,
21 we tend to create, if nothing is done or if the present
22 efforts are not stepped up, a sort of slag heap of
23 human beings, and when people have suffered a substantial
24 reduction in their earning capacity they become quite
25 embittered and not the citizens that we would wish them
26 to be.

27 Our own experience in this area is
28 primarily that the Board does not have the facilities,
29 particularly the physical facilities, for retraining
30 people. They are heavily dependent on persuading other



1 employers to take these people because, after all, if
2 they suffer an industrial accident, a new employer can
3 be just as reluctant to take on a person even though
4 it may be lighter employment in terms of the strength
5 required. So, lacking the sheltered workshop of their
6 own or lacking a training school of their own, the
7 Board has considerable difficulties in retraining and
8 in relocating these people.

9 THE COMMISSIONER: What is your suggest-
10 ion?

11 MR. CRAIGS: Certainly one of the things
12 which seems to us is desperately needed is some form
13 of sheltered workshop where these people can be trained
14 or perhaps some facilities made in the various vocational
15 training schools in various parts of the province.
16 Perhaps facilities could be provided there where they
17 could attempt to learn a trade and be on compensation
18 in the same manner as they are admitted to Downsview.

19 THE COMMISSIONER: Don't they do some-
20 thing of that kind? I understood it was only people
21 from areas where there were no retraining facilities
22 that went into Downsview.

23 MR. CRAIGS: I am not talking about
24 physical rehabilitation, I am talking about retraining
25 of skill. I think the Downsview Hospital reflects
26 great credit on the Board, great credit indeed. But
27 this is in the area of getting people retrained for
28 some other occupation and getting them relocated: we
29 believe that the Board's activities should be greatly
30 expanded in that connection.



1 There is a section in the Act where
2 they have an initial grant of \$200,000 a year, but the
3 Act is so written that they are able to use a great
4 deal more. I have personal experience of my own of
5 injured people who have great difficulty in obtaining
6 retraining.

7 THE COMMISSIONER: It seems to me I
8 read something in today's paper or yesterday's paper
9 about representations being made on a government re-
10 training programme of this kind. You didn't see it?

11 MR. CRAIGS: No, sir.

12 MR. ESTEY: Mr. Craigs, are you saying
13 that the Board, alternatively, should either establish
14 these facilities or should make use of provincial
15 facilities in such vocational centres as the Algonquin
16 College, the one in Ottawa?

17 MR. CRAIGS: Yes. Even the collegiates
18 have workshops.

19 MR. ESTEY: Does the Board use these
20 facilities now under its present authority of Section
21 53 and pay the fee, whatever the cost is?

22 MR. CRAIGS: Yes, but we are talking
23 about an expanded effort.

24 MR. ESTEY: Section 53 has a ceiling
25 of \$200,000. Do you know if they go up to that?

26 MR. CRAIGS: They are past it.

27 MR. ESTEY: Do you know how that money
28 is expended? They don't have their own facilities,
29 we have been told.

30 MR. CRAIGS: There is the very famous



1 case of a paraplegic who has put himself through
2 university.

3 MR. ESTEY: Under this Section, under
4 this fund?

5 MR. CRAIGS: Yes. I am talking about a
6 more mundane level, because this individual was obviously
7 an exceptional individual and obviously his intellectual
8 capacity was substantial to begin with. But I am talking
9 about the ordinary man who works in a plant for Inco or
10 General Electric.

11 MR. ESTEY: You are talking about re-
12 training in a trade, and you want facilities either run
13 by the Board or paid by the Board?

14 MR. CRAIGS: Not necessarily a trade,
15 unless I am thinking of a trade in a rather narrow
16 craft sense. I am thinking of retraining in another
17 skill or semi-skill, if you like.

18 MR. ESTEY: I think that is all I want
19 to ask you, sir.

20 MR. CRAIGS: Thank you, sir.

21 MR. ESTEY: We have a number of briefs
22 in which this topic and in which the vocational rehabili-
23 tation topic were raised. I am going to go through
24 them in alphabetical order, and those present who wish
25 to present either today's topic or the vocational re-
26 habilitation and job protection might indicate so. We
27 heard something about this, the Bell Telephone Company.
28 I don't see any of their representatives here today.

29 The Board of Trade. The Ontario Association of
30 Professional Safety Men. We have heard about their brief.



1 The Canadian Manufacturers' Association. I think that
2 is scheduled for tomorrow. The Construction Safety
3 Association. The Forest Products Accident Prevention
4 Association. International Union of Mine, Mill. You
5 have a topic on this. Would you like to go on, sir?

6 MR. HALL: Mr. Estey, I wonder if you
7 could clarify for me, are we on the question of accident
8 prevention now?

9 MR. ESTEY: Yes.

10 MR. HALL: And we will be dealing with
11 the job protection and rehabilitation at a later date?

12 MR. ESTEY: If it is agreeable with you,
13 we would like to deal with both today, accident preven-
14 tion and then go to rehabilitation and job protection.

15 MR. HALL: Right. Mr. Commissioner, in
16 the light of the previous briefs which have dealt exten-
17 sively with the recommendations of Mr. Justice Roach and
18 the numerous references that have been made to the
19 recommendations that are embodied in the 1950 report, I
20 don't think that it would serve any useful purpose to
21 once again read all of these sections as they have been
22 referred to.

23 THE COMMISSIONER: That is right.

24 MR. HALL: I think that I will confine
25 myself to making some observations which may throw a
26 little different light on the meaning to us of the recom-
27 mendations of the Roach Commission and, of course, our
28 brief which endorses those recommendations.

29 I think that the statement - and I believe
30 it is contained in the Roach report - that in order to



1 effectively deal with accident prevention, one must have
2 a will to safety, becomes a question of motivation. I
3 think we have to recognize that while there is an iden-
4 tity of interests between the employer and the employee
5 in the process of production, it does not necessarily
6 fall that the motivation is identical. I hope you won't
7 consider me pedantic if I deal with the matter perhaps in
8 a little bit of an historical concept, in fact in terms
9 a little bit of economics. I think it is safe to say,
10 since mankind has moved away from simple, primary pro-
11 duction into and including commodity production, which
12 perhaps received its real impetus in the industrial
13 revolution, the workman has been to an increasing extent
14 divorced from his product. He has been, in the main,
15 divorced from particularly the question of accident
16 prevention because, as is pointed out in the Roach Report,
17 the responsibility for accident prevention lies with the
18 employer and it is suggested, and this is not to enter
19 into any polemic as to the validity, correctness or
20 morality of the situation - under the existing social
21 relations the employer, of necessity, is concerned with
22 a profitable operation.

23 In this regard, of course, it goes with-
24 out saying, he is concerned, himself, with a low accident
25 rate, but this is not his basic motivation. The basic
26 motivation is a profitable operation, within which the
27 question of accident prevention and a low assessment
28 rate do have some significance. I want to emphasize that
29 the employer, in the main, in general, in the Province
30 of Ontario, has a responsibility for accident prevention



1 and, of course, this is related to the Board's provision
2 in their supervision of the accident prevention associa-
3 tions which are employer associations.

4 Let us take a look at the motivation from
5 the other side, from the side of the workman. The work-
6 man's motivation, of course, is to obtain those working
7 conditions and wages that will give him the best standard
8 of living. Presupposing this, of course, is the question
9 of the workman being in a healthy, physical condition
10 to carry on his day's work and, insofar as he is concer-
11 ned, to the best of his ability, to advance in his work
12 in a creative fashion and, of course, the monetary
13 results which quite often derive from this. But in the
14 maintenance of this healthy condition or the conditions
15 of accident prevention to the workman, there is no decision
16 making policy at all. Even under collective agreements
17 - and it is significant that a large area under collec-
18 tive agreements are joint safety committees and there
19 is increasing recognition in the Province of Ontario in
20 this regard. But there is no statutory authority for
21 the joint safety committee concept that has been dealt
22 with by previous speakers. So the motivation of the
23 individual workman, because he is in no position to
24 individually or collectively in his own organization,
25 be a part of decision making in accident prevention,
26 generally speaking, we have to, I think, agree that the
27 workman generally discounts sound projections that are
28 made by accident prevention associations because he
29 feels he is no part of it.

30 I think that the section dealing with



1 joint committees, in our view, this implementation start-
2 ing at the bottom, at the plant level, which will give
3 joint participation, which will give the workman an
4 opportunity of identifying individually and and in a
5 collective way, through his own organization with the
6 efforts of accident prevention, that from this position
7 of the bottom, it will permeate through all phases and
8 all aspects. I am quite sure that the responsible people
9 in the present accident prevention associations recognize
10 the importance of workers' participation in this regard.

11 Dealing with the question of accident
12 prevention in its broadest sense - and I hope I will not
13 be accused of restating things that have been already
14 said on the question of industrial disease and the
15 sections dealing with backs - it seems to us that the
16 presentations by the various experts, whom the Commission
17 have brought before us for our information and for the
18 information of the Commission, have brought into very
19 sharp focus the necessity for a greatly expanded pro-
20 gram of research into the reasons for industrial disease.

21 I thought it was rather significant that
22 Dr. Paterson, in answer to a direct question dealing with
23 emphysema - and I hope I am quoting him correctly - took
24 the position that there have not been any studies in
25 this regard which would prove or disprove that emphysema
26 arises out of the industrial environment. I recognize,
27 of course, that emphysema associated with silicosis, is
28 compensable but emphysema in general, as far as a claim-
29 ant is concerned, is virtually impossible to establish
30 as arising out of the occupation in the absence of



1 studies which would show that the incidence of emphysema
2 in an industrial environment is greater than it is in
3 the general environment.

4 I think that this was underscored by the
5 remarks of Dr. Swanson, dealing with arthritis. He
6 quoted from studies in Great Britain, which I am inclined
7 to think, personally, are applicable in a general way,
8 and perhaps in some things, a specific way to the Canadian
9 environmental condition in industry, but we don't have
10 that kind of a study in Canada and haven't had it. And
11 so, under these circumstances, the Board has perforce,
12 no other way to make its determination on adjudication
13 than the opinion of the specialist in this regard.

14 The same thing can be said to be true of
15 the necessity for a detailed study of backs. Certainly
16 the work that was done by the Board on backs in the re-
17 habilitation field, the report was revealing in this
18 regard but a much broader study must take place. There
19 is not only the question of the tremendous cost to the
20 employers which is passed on to the consumer, but in
21 order that where this great increase - and I understand
22 it is between the ages of 18 and 33 - that such a study
23 would reveal which steps should be taken to eliminate
24 the situation.

25 On the matter of rehabilitation, we have
26 before us - my colleague has dealt with the question of
27 light duty and the retention of the 100 per cent in the
28 absence of modified work as directed by a doctor. I
29 don't think that it is necessary for me to restate this,
30 Mr. Commissioner. On the question of rehabilitation,



1 there is no doubt that the Downsview operation is one
2 that is perhaps without equal in any country in the world.
3 But I share the sentiments that were expressed by a
4 previous speaker on the brief before me, that now, perhaps
5 is the time for an expanded program, if you will, a degree
6 of de-centralization. I am thinking particularly of the
7 area where my main efforts are directed in the Sudbury
8 and district and in the northern areas. It seems to me
9 that with the limited availability of modified duty or
10 favouring employment, I believe was used by Dr. Schisler,
11 that we have real problems in this regard. It seems to
12 me that the establishment of regional rehabilitation
13 operation in the Sudbury district, servicing the northern
14 area, would greatly contribute to, number one, the phy-
15 sical rehabilitation of the people requiring those services
16 and, number two, a more effective coordination of the
17 agencies that were referred to in the questions asked by
18 counsel, Mr. Estey. It has been my experience that the
19 Board's rehabilitation officer does an effective job of
20 coordinating with the agencies in the district, providing
21 job training, providing for upgrading of education and
22 retraining in new skills under the C.B.T. program in the
23 Sudbury district and, of course, where referrals are made
24 to Ryerson. But I am thinking particularly that, in
25 order to more effectively carry out this work, that there
26 should be a regional rehabilitation set-up in the Sudbury
27 district or in some area very close to the Sudbury
28 district to take care of the northern region. And, of
29 course, it would follow that such rehabilitation centres
30 scattered throughout the province would have the advantage



1 of considerably speeding up the rehabilitation and re-
2 training on the job.

3 On the question of a centralized authority
4 for accident prevention, it is the considered opinion of
5 my Union that this should be under the direction of the
6 Workmen's Compensation Board. We say this fully recog-
7 nizing the problems that may be run into in the reshuffl-
8 ing of government departments in order to achieve such
9 a centralized authority but in order to implement the
10 points that I have outlined and the points that have been
11 projected in previous briefs which have said the same
12 things as I have, it is our belief that the Workmen's
13 Compensation Board is an agency, at least at this time
14 and in the foreseeable future that can best encompass
15 accident prevention and, of course, its enforcement.

16 I would like to read, Mr. Commissioner,
17 our section on job protection, which has not yet been
18 read, I understand.

19 This is on page 11 of our brief.

20 JOB PROTECTION

21 Presently, many injured workmen enjoy job
22 protection provided by the terms of the collective agree-
23 ment existing between their employer and their certified
24 bargaining agency. Where no collective agreement is in
25 force, many employers feel morally obligated to retain
26 an injured workman's job and to cooperate in the rehabili-
27 tation of an injured workman. There are, however,
28 employers who have no compunction in terminating an in-
29 jured workman's employment whether the injury be of a
30 minor or major character. Such workmen, in many instances,



1 suffer considerable financial loss. Fringe benefits such
2 as medical, hospital and insurance benefits, which form
3 part of the conditions of his employment, and which may
4 have been paid in whole or in part by the employer, may
5 cease with the termination of his employment. The nature
6 of his disability may be such that he will experience
7 difficulties in obtaining new employment. Under these
8 conditions an injured workman and his family suffer undue
9 hardship, strain and worries, which in some instances,
10 provide fertile ground for disabling neuroses that greatly
11 impede the rehabilitation of the injured workman.

12 We submit, therefore, that the Workmen's
13 Compensation Act be amended to provide that no employer
14 may under any circumstances, discharge an employee whilst
15 the employee is on compensation by reason of an industrial
16 accident.

17 That concludes my remarks and the position
18 of my union on the matters that I have spoken of, Mr.
19 Commissioner.

20 THE COMMISSIONER: Thank you.

21 MR. ESTEY: Mr. Hall, in the order in
22 which you took those topics and dealing with accident
23 prevention, I take it that you are recommending that the
24 Act now incorporate Mr. Justice Roach's recommendations
25 which took the effect of a very long amendment to section
26 116 which, largely, would move into the Board that which
27 is now carried on by the Department of Labour.

28 MR. HALL: Yes.

29 MR. ESTEY: And to that extent you would
30 emulate, I think, more closely B.C. and Alberta than the



1 rest of the provinces?

2 MR. HALL: That is correct.

3 MR. ESTEY: And I take it that along the
4 line of what Mr. Craig said a few moments ago while you
5 were at it, you would probably also consider centraliza-
6 tion of the Department of Mines accident prevention work
7 and the Department of Lands and Forests.

8 MR. HALL: That is correct, Mr. Estey.

9 MR. ESTEY: And if practicable, on
10 closer examination, the Department of Health, subject
11 to the thing being sensibly moved.

12 MR. HALL: Yes, and, of course, recog-
13 nizing that there is some division between environmental
14 health in the occupational sense and, of course, the
15 health in the general public.

16 MR. ESTEY: Now, when you do all this,
17 what would you do about moving the 2½ million dollar
18 budget from the Department of Labour? Would you finance
19 the inspection and so on out of the general funds of
20 the province as the Department of Labour does now and as
21 the Department of Mines does and Lands and Forests?

22 MR. HALL: My personal view on this is
23 that I believe it should come from the funds now acquired
24 under the assessment. I can appreciate that in the first
25 instance, the funds now being provided in the Department
26 of Labour, that there would be some reduction in the
27 liquid revenues of the Board but in the long range view
28 I am of the opinion that this would balance out and, in
29 the reduction^{of}/accidents, the sharp reduction of accidents
30 which theoretically I could see there would be a more



1 favourable position financially to the Board and, of
2 course, to the employers.

3 MR. ESTEY: Let me see if I understand
4 that. You are saying that the \$2 $\frac{1}{2}$ million which the
5 province now lays out to protect the public interest,
6 would be saved by moving this function over to the Work-
7 men's Compensation Board and the same would apply to Mines
8 and Lands and Forests and the cost would be paid by
9 raising the levy on the employers?

10 MR. HALL: Yes, but I want you to be
11 clear that I am well aware of the impact on the assess-
12 ment rate in the first instance. I am looking at the
13 longer range view. However, I am speaking personally
14 and I am not rigid and inflexible on this. I have not
15 made that close a study of the financial implications.

16 MR. ESTEY: It is not in your brief and
17 your Union takes no position on that?

18 MR. HALL: No, speaking personally.

19 MR. ESTEY: Then, dealing with job pro-
20 tection, you say that you think the Act should be amended
21 to provide that no employer may, under any circumstances,
22 discharge an employee while he is receiving compensation.

23 MR. HALL: That is right.

24 MR. ESTEY: What happens to the permanent
25 partial disability where, by reason of the nature of the
26 employer's operations, he has no employment for the man,

27 MR. HALL: I am assuming, of course, that -

28 MR. ESTEY: For instance, a stone quarry
29 and all the men run jack hammers or worse, and the fellow
30 develops a spinal condition which the jack hammer would



1 be the end of?

2 MR. HALL: Yes.

3 MR. ESTEY: Now he has a permanent partial
4 disability and he can't work in that quarry and the
5 employer has no other operation. What in the world would
6 he do with him if he has to keep employing him?

7 MR. HALL: I must confess, Mr. Estey,
8 you raise a very good point. My thinking is, of course,
9 at least I think the intent was that an employee would
10 not have his employment terminated by his employer --

11 MR. ESTEY: By reason only of having
12 been injured, that is what you are saying?

13 MR. HALL: That is correct.

14 MR. ESTEY: I understand that, thank you
15 very much, Mr. Hall.

16 Now, Mr. Commissioner, the Labourers'
17 International Union is next on my list. They have some
18 people who will be available tomorrow. I then move on
19 to Northern Forest Products -

20 THE COMMISSIONER: There is someone here
21 from the Canadian Manufacturers' Association.

22 MR. ESTEY: Canadian Manufacturers'
23 Association is also scheduled to come in on Wednesday
24 morning, Mr. Commissioner.

25 Then, Northern Forest Products, Ontario
26 Federation of Construction Association. We have heard
27 from the Ontario Federation of Labour, Ontario Forest
28 Industries Association, Ontario Medical Association,
29 they are scheduled for tomorrow, Ontario Mining Associa-
30 tion, Ontario Pulp and Paper.



1 MR. McINTOSH: Mr. Perry, I believe, had
2 some discussions with you.

3 MR. ESTEY: Will he be here tomorrow?

4 MR. McINTOSH: He can be here tomorrow,
5 yes.

6 MR. ESTEY: He is not here now?

7 MR. McINTOSH: No.

8 MR. ESTEY: Ontario Pulp and Paper.

9 MR. SCOTT: I am the Secretary-Manager
10 of the O.P.M.S.A. We do not have any of our principals
11 here at the present, or any of our Directors. I was not
12 able to tell them when our turn would arise and they were
13 depending on me to give them some warning. If it would
14 expedite the Hearing in any way, I would be glad to read
15 the brief and if that is essential to the Hearings, to
16 enter it into the record. But I would have to reserve
17 answers that I am not qualified to give, if such were
18 submitted.

19 MR. ESTEY: Well, sir, you can proceed
20 any way you wish. If you wish to read your brief on these
21 points into the record now, that would be fine. If you
22 wish to have your people here tomorrow morning and have
23 them present the brief, would you rather have them pre-
24 sent it, that would be fine too. So you may decide which
25 way you would like to go.

26 MR. SCOTT: If you need something to fill
27 in the time at the moment, I would be glad to read it
28 because my principals are all familiar with our brief.

29 MR. ESTEY: Well, you proceed, if you like.

30 MR. SCOTT: Mr. Commissioner and gentlemen,



1 the brief is addressed to the Honourable Mr. Justice
2 McGillivray:

3 Thank you for the opportunity afforded
4 us to present a written submission for consideration by
5 the Royal Commission on The Workmen's Compensation Act.

6 The Ontario Pulp and Paper Makers Safety
7 Association was constituted by Letters Patent dated
8 March 11, 1915, under the Ontario Companies Act to promote
9 the work of prevention of accidents in the pulp and paper
10 industry. The Association is managed by 31 directors
11 who are elected annually. The directorate is composed
12 of top ranking executives which collectively account for
13 over 95 per cent of the aggregate payroll in the industry.
14 They serve without remuneration or expense to the Associa-
15 tion.

16 The Association, in accord with the pur-
17 poses for which it was formed, function as the official
18 accident prevention agency for the woodlands operations,
19 mills and plants within its membership. In general the
20 procedures followed in carrying out this responsibility
21 are as follows:

22 The stimulation of an active interest in
23 accident control among management at all
24 levels.

25 Assisting in the detection and removal
26 of physical and mechanical hazards,

27 Advising on the development of safe work
28 methods,

29 Providing a training service for super-
30 visors.



1 Encouraging the training of first aid men,
2 collecting, recording, and tabulating
3 accident information for the use of member
4 companies.

5 Conducting annual safety competitions.
6 Supplying member companies with posters,
7 accident investigation reports and other
8 visual aid materials such as films and
9 slides.

10 One of the most effective activities of
11 the Association is the sponsorship of seven regional
12 branches which have been functioning for many years in
13 all areas of the province. Each group elects its own
14 officers and safety meetings are held regularly on a
15 rotating basis. The expenses of the hundreds of volun-
16 teers involved in branch work are borne by the member
17 companies, representing an important contribution to the
18 safety effort.

19 The pulp and paper industry in Ontario
20 has enjoyed considerable success both in woodlands opera-
21 tions and in the mills, in the control of industrial
22 accidents. The attached graphs will provide an accurate
23 and revealing insight into the industry's accomplishments.

24 I might digress and say that the graphs
25 show that since 1945 there has been a 56 per cent improve-
26 ment in the woods operations and a 75 per cent improvement
27 in the mill operations.

28 THE COMMISSIONER: What was that second
29 percentage?

30 MR. SCOTT: 56 per cent in the lumbering



1 operation and 75 per cent in the manufacturing industry.

2 Many factors have contributed to this
3 success, but all of them emanate from the practical
4 application of the fundamental principle that accident
5 control is one of management's responsibilities to be
6 carried out with the same patient attention to detail
7 that is accorded other operating requirements.

8 This Association has never concerned itself
9 with matters of classification, rating or assessments
10 under the Workmen's Compensation Act, nor with the admini-
11 strative functions of the Workmen's Compensation Board,
12 but confines its interest and activities to the reduction
13 of the frequency and severity of work injuries by every
14 possible means.

15 Accordingly, the Association offers no
16 submission with respect to the general provisions of
17 the Workmen's Compensation Act or its administration.
18 It does, however, wish to put forward the considered
19 opinion that Section 117 of the Act, providing for the
20 function of safety associations, should be retained and
21 administered to permit the representatives of industry
22 to continue to control the policies and activities of
23 the associations.

24 Respectfully submitted, The Ontario Pulp
25 and Paper Makers Safety Association.

26 THE COMMISSIONER: I suppose there is
27 no need to ask you to enlarge on that. What your Associa-
28 tion says is that it is management's responsibility and
29 as a consequence they should be left to operate it. Other
30 things we have heard this afternoon are that, for best



1 success it should be a cooperative effort, some labour
2 representative on the safety committee would result in
3 some improvement in the result because they felt partly
4 responsible for it. I suppose you don't wish to enlarge
5 any on what you said?

6 MR. SCOTT: I will comment, Mr. Commission-
7 er. In the activities of our Association, we encourage
8 our member companies to collaborate very closely with,
9 not necessarily the union representative, their employees'
10 representative, because there are still companies that do
11 not have unions. We encourage them to work very closely
12 and include the working men on their active committees
13 and I think, without exception, every company that I am
14 familiar with in the pulp and paper industry in the pro-
15 vince does, in fact, have joint committees both in the
16 mills and in the woods.

17 Now, in our branch area meetings, the same
18 is true: companies take hourly paid people, not necessar-
19 ily union representatives - they go to these conferences
20 as company representatives representing the group that
21 they work with because they say there are a lot of people
22 on hourly paid operations that are still not union members
23 and there has been considerable financial assistance by
24 the companies. They work out their own agreements whereby
25 four or five people from the hourly paid occupations will
26 attend a conference or district safety meeting, the
27 company will, in some instances, pay all their expenses
28 and the union or the employees will pay the man's lost
29 time. Various methods have been worked out to suit the
30 people who are concerned.



1 I would say that our industry has repeat-
2 edly acknowledged this support and help that we have had
3 at the various levels.

4 THE COMMISSIONER: So far as you are con-
5 cerned, then, you would have no objection to a recommen-
6 dation that on that level, or at levels other than the
7 accident prevention associations themselves, which you
8 say are composed of these directors, you would have no
9 objection to a recommendation that labour be representa-
10 ted on all safety committees.

11 MR. SCOTT: I don't think it would have
12 any effect because it is active now and, as in many of
13 the regulations, the pulp and paper industry has inaugu-
14 rated such regulations long before there were regulations
15 seeing that it was for the common good. I don't think
16 it would have any real affect.

17 THE COMMISSIONER: But you don't feel
18 that the constitution of the association itself should
19 be changed as to membership? The only suggestion is that
20 one labour man be appointed to it. That is the Federa-
21 tion of Labour's suggestion.

22 MR. SCOTT: I am sorry.

23 THE COMMISSIONER: That one labour man
24 be appointed to your accident prevention association to
25 the Board of Directors.

26 MR. SCOTT: I can't comment. I have no-
27 thing to do with the election of officers of our Associa-
28 tion. The directors are elected at the annual meeting
29 each year by the member companies and then the directors
30 appoint, within their own group, their president and vice-



1 president. I am a paid employee of the Association and I
2 am appointed annually by the Board of Directors.

3 THE COMMISSIONER: What is your position?

4 MR. SCOTT: I am Manager and Secretary-
5 Treasurer.

6 THE COMMISSIONER: Then it may not be
7 fair to ask you then, whether or not there should be a
8 change in the constitution of that organization?

9 MR. SCOTT: No, I have no authority in
10 that direction and that is entirely up to the policy of
11 the industry.

12 THE COMMISSIONER: Thank you.

13 MR. ESTEY: I was going to ask you three
14 questions but all three of them may prove to be embarrass-
15 ing in your position as an employee of the organization.
16 I wonder if it might be a good idea for you to have your
17 people here tomorrow morning, is that possible?

18 MR. SCOTT: My President is out of town
19 tomorrow. I can, I believe, contact our immediate Past
20 President or our Vice-President to be here but I can't
21 have our President here.

22 MR. ESTEY: It will be up to you as to
23 who you will have, but I don't see much point in asking
24 you because of your last answer - and I don't quarrel
25 with that answer - some of these questions dealing with
26 management responsibility, and the application of the
27 Loggers Safety Act to your operations, the question of
28 financing of the Association and one thing and another,
29 like that.

30 THE COMMISSIONER: It does not necessarily



1 have to be tomorrow.

2 MR. SCOTT: Our President will be back in
3 town on Wednesday. I talked to him on Wednesday and he
4 said if he was needed, he would be available on Wednesday
5 but he took a 5:00 o'clock plane north this evening and
6 won't be in until tomorrow night.

7 THE COMMISSIONER: That will be satisfac-
8 tory, Mr. Estey.

9 MR. ESTEY: You say Wednesday is possible?

10 MR. SCOTT: Yes. Would it be possible to
11 give me an approximate time that he might be needed?

12 THE COMMISSIONER: We can deal with him,
13 first one in the morning. He will just be here for a
14 few minutes.

15 MR. SCOTT: At 10:00 o'clock in the morn-
16 ing?

17 MR. ESTEY: I think that is satisfactory.
18 C.M.A. are going to be here but I am sure they would not
19 quarrel with the Association going for a few minutes
20 ahead of them.

21 MR. SCOTT: Thank you very much.

22 THE COMMISSIONER: Fine, thank you, Mr.
23 Scott.

24 MR. ESTEY: Mr. Commissioner, the remain-
25 ing ones on the list I don't think are represented here -
26 the Retail Council of Canada and the United Steel Workers.
27 We actually have heard their brief on these two subjects.

28 Then, dealing with Vocational Rehabilita-
29 tion and Job Protection, we have International Nickel
30 Company who were here today but are not here now, Federa-



1 tion of Labour has spoken on that, Ontario Medical Associa-
2 tion will be here tomorrow and on Job Protection we have
3 the United Electrical Workers but I don't see anybody
4 here from them. The others we have heard.

5 So, subject to reviewing some of these for
6 the record, those are the submissions for today. I am
7 wondering, Mr. Commissioner, if any good purpose would be
8 served in reading these documents in, because on the
9 subject of Accident Prevention those we have not dealt
10 with seem very repetitive.

11 THE COMMISSIONER: I think we can avoid,
12 perhaps reading them in. You might, Mr. Estey, put in a
13 summary similar to the one you have in your hand, of what
14 the opinions are. As far as I am concerned, I have read
15 these submissions, I will re-read them when I come to make
16 my report and it might save time if we don't feel we have
17 to read them in unless there is something there that has
18 not been covered already. Perhaps you could look them
19 over this evening and if there is you could bring them in
20 in the morning.

21 MR. ESTEY: Of the remaining ten, we have
22 five or six who are coming in anyway and, in the meantime
23 we can make certain that there is no principal issue
24 omitted.

25 That being so, those are the matters to
26 come before the Royal Commission today, Mr. Commissioner.

27 THE COMMISSIONER: Well, it is twenty
28 after four. We will adjourn until 10:00 a.m. tomorrow
29 morning.

30 --- At 4.20 p.m. the hearing adjourned until 10.00 a.m.
on Tuesday, 25 October, 1966.

